

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
GERALD JOHNSON, et al.,) **CRIMINAL NO.:** JKB-16-0363
Defendant.) **Jury Trial:** Volume 3
_____)

Transcript of Proceedings
Before the Honorable James K. Bredar
Monday, November 27th, 2017
Baltimore, Maryland

For the Plaintiff:

Peter J. Martinez, AUSA

Christina A. Hoffman, AUSA

For Defendant Gerald Johnson:

Paul F. Enzinna, Esquire

Jeffrey B. O'Toole, Esquire

For Defendant Kenneth Jones:

Alan R.L. Bussard, Esquire

For Defendant Marquise McCants:

John R. Francomano, III, Esquire

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P R O C E E D I N G S

THE COURT: Good morning. Be seated, please. Ready to continue trial in United States versus Johnson JKB-16-0363. Before we bring the jury in, I understand there's some issues to address. Mr. Martinez.

MR. MARTINEZ: Yes, Your Honor, I see Mr. Bussard standing up at the same time. I think the first issue to address is Mr. Bussard filed a motion in limine this weekend to exclude some firearm evidence and I think the parties agree that it makes sense to address that motion because it will affect who we call in these first couple of days of the trial. So there's that. And then this morning after sharing our slide deck for opening, Mr. Francomano raised a couple of issues with respect to slides in the deck that we should probably address as well before we show those to the jury.

THE COURT: All right. So I don't have a copy of Mr. Bussard's motion, do you have an extra copy of it, Mr. Bussard? This is a nine-page memorandum you want me to read here.

MR. BUSSARD: Your Honor, this started Friday night and I filed something -- I think it started Friday night. In essence, I was contact -- well, it starts with the evidence review we had two weeks ago. And it was clear at that time when we went through the physical evidence that there was several items that weren't there and we were told that they

1 would be found and we'd have another physical evidence review.

2 And then last week I was contacted by Mr. Martinez,
3 Ms. Hoffman, and Ms. Christy, and I was told that the one item
4 that pertains to Overt Act 23 was returned to its rightful
5 owner and can't be located at the present time.

6 THE COURT: Is there any necessity to address this
7 before opening statements?

8 MS. HOFFMAN: I think as Mr. Martinez said, it will
9 affect who we call in the beginning days of trial. I think we
10 can address it fairly quickly, but if Your Honor would prefer
11 to wait until you've had a chance to read the motion, we
12 certainly understand.

13 THE COURT: Bring it back to my attention at the
14 close of the trial day when we don't have the jury waiting for
15 us.

16 Okay. What other issues?

17 MR. MARTINEZ: We also have some objections to the
18 slide deck, which I'll pass up the paper copy to the Court.
19 And I'll let Mr. Francomano articulate those.

20 MR. FRANCOMANO: Thank you. Your Honor, I do have
21 two objections. One, I believe Number 31, and that is a
22 picture of, I believe they're going to reference a GPS
23 coordinate.

24 THE COURT: Are these numbered, how do I find 31?

25 MR. MARTINEZ: I'll pass them up to the Court.

1 MR. FRANCOMANO: Your Honor, this is going to be
2 contested in the litigation.

3 THE COURT: All right. So this is -- what I have in
4 front of me is a picture of what looks like an online map,
5 like a Google map. It has 2/4/17, 10:50 p.m., and it shows a
6 pin at what appears to me -- I don't know, is that the CVS
7 store there at Greenmount and North?

8 MR. MARTINEZ: It's in the area, Your Honor, yes.

9 THE COURT: Okay. So what about it?

10 MR. FRANCOMANO: Your Honor, I believe that the
11 government is going to bring in that this is a GPS coordinate.
12 If it's just a dot where the shooting of Mr. Bess happened, we
13 have no issue with it whatsoever. If they are going to bring
14 it in and try to explain to the jury this is where the GPS
15 occurred, as I said, we do have an issue with that.

16 THE COURT: What is your -- what is the context of
17 this slide, Mr. Martinez?

18 MR. MARTINEZ: We're going to say that at
19 10:50 p.m., February 4th, 2017, Baltimore police officers
20 received a ping hit from the phone company pursuant to an
21 exigent request that they had made that placed the target cell
22 phone there. And that map with that pin in it will come in as
23 an exhibit during our case. We will introduce through one or
24 both officers who were receiving the e-mail ping hits, the
25 actual e-mails that they got, which had links to Google maps.

1 And for this particular 10:50 ping hit on February 4th, 2017,
2 either or both of the officers can and will testify that when
3 they clicked on the link, that's what popped up. That's what
4 the officers got in real time.

5 I appreciate that Mr. Francomano may dispute that.
6 He may call his own expert. He still hasn't told us what that
7 expert is going to say or anything like that. But simply the
8 fact that that's dis -- doesn't mean that that -- we don't
9 reasonably expect that that very map is coming into evidence,
10 and therefore, we ought to be able to refer to it in our
11 opening.

12 THE COURT: What is the issue, Mr. Francomano, based
13 on the predicate that Mr. Martinez has just put on the record?

14 MR. FRANCOMANO: Your Honor, just as I say, this is
15 a situation that's going to be contested. It's going to be an
16 issue --

17 THE COURT: But the government puts evidence in --
18 makes -- the government predicts the admission of evidence in
19 their opening statement and then attempts to introduce
20 evidence all the time that is disputed. I mean, it's a
21 trial.

22 MR. FRANCOMANO: I understand, Your Honor.

23 THE COURT: So what's the point?

24 MR. FRANCOMANO: Your Honor, I just wanted to make a
25 motion on that.

1 THE COURT: Well, what is the motion, the motion --

2 MR. FRANCOMANO: The motion to have that slide not
3 be presented in opening statement.

4 THE COURT: Overruled. All right. What else?

5 MR. FRANCOMANO: Your Honor, then there's a second
6 one in which I believe this is a Facebook from Wesley Brown,
7 which it says, "Free my N-word, Digga," obviously that's a
8 reference to that he is incarcerated.

9 THE COURT: All right. What's this about,
10 Mr. Martinez?

11 MR. MARTINEZ: There will be a point during our
12 opening where we talk about Mr. McCants being caught during a
13 armed home invasion robbery in progress in Cecil County and
14 we're going to tell the jury that the day after that robbery
15 his fellow member of the BGF Greenmount Regime, Wesley Brown,
16 is posting on Facebook "free Digga," which we will tell the
17 jury, shows that even though the robbery happened in Cecil
18 County folks back at BGF headquarters were keeping tabs on
19 Mr. McCants's criminal exploits.

20 THE COURT: What evidence, if any, will otherwise
21 indicate that the defendant was held in custody pending --
22 prior to this trial? Are there jail calls?

23 MR. MARTINEZ: There are jail calls and there's
24 actually going to be testimony --

25 THE COURT: Are there jail calls including

1 Mr. McCants?

2 MR. MARTINEZ: Yes, several. And there will be
3 evidence that --

4 THE COURT: Where's the prejudice, Mr. Francomano,
5 if there's other evidence coming in that's already going to
6 show the jury -- I mean, what we're trying to do here in
7 general is not prejudice a defendant with gratuitous evidence
8 that he's in custody prior to trial. But if there is evidence
9 that goes to the core of the charges in the case, which
10 inherently reveals that a defendant is in custody, such as
11 jail calls, the notion that there is some special prejudice
12 associated with an exhibit or proof like this loses its punch;
13 right?

14 MR. FRANCOMANO: Well, Your Honor, that text is from
15 2010 -- or that Facebook post is from 2010, I believe.

16 THE COURT: Right.

17 MR. FRANCOMANO: And the jail calls are from this
18 recent issues.

19 THE COURT: So your point is that there's prejudice
20 that attaches uniquely to each particular instance of
21 incarceration and that the Court should be careful to protect
22 against that.

23 MR. FRANCOMANO: Your Honor, that's exactly what I'm
24 saying because 2010 is different from 2016 or '17.

25 THE COURT: Under Rule 403, I find that the

1 probativity outweighs the prejudice. It will come in.

2 MR. FRANCOMANO: Thank you.

3 THE COURT: Anything else, any other preliminary
4 issues? Anything from the defendants?

5 MR. ENZINNA: No, Your Honor.

6 MR. BUSSARD: No, Your Honor.

7 THE COURT: Okay. And did we note appearances this
8 morning? Mr. Enzinna and Mr. O'Toole are here on behalf of
9 Mr. Johnson. Mr. Bussard is here on behalf of Mr. Jones.
10 Mr. Francomano is here on behalf of Mr. McCants. Okay. We
11 have an issue now with Juror No. 4. Please bring Juror No. 4
12 to the courtroom.

13 MR. MARTINEZ: Your Honor, while we're waiting, can
14 I ask a scheduling question?

15 THE COURT: Yes.

16 MR. MARTINEZ: We notice that the Court has
17 proceedings on its calendar for this afternoon, Tuesday, and I
18 believe Thursday. Just for planning purposes, can we
19 anticipate that those VOSRs and sentencings and such will go
20 forward at scheduled times?

21 THE COURT: I have given my chambers some
22 instructions with respect to some of those. That could
23 change, so let's talk at the next break.

24 MR. MARTINEZ: All right.

25 THE COURT: Please come on in, sir, have a seat in

1 your regular chair, No. 4. There you go. Good morning to
2 you.

3 JUROR NO. 4: Good morning.

4 THE COURT: I understand that you had a particularly
5 enjoyable Thanksgiving holiday because some news was delivered
6 to you about plans for January; is that right?

7 JUROR NO. 4: Yes.

8 THE COURT: Go ahead and tell me about what
9 development occurred in your family.

10 JUROR NO. 4: So there was a family ski trip that
11 was scheduled and our reservations were made for the second
12 week in January.

13 THE COURT: Okay. So what date does that begin?

14 JUROR NO. 4: It's the -- mind if I look at my
15 phone?

16 THE COURT: Please do.

17 JUROR NO. 4: I want to say the 8th through 16th.
18 It's the 6th through the 13th. That's Saturday to Saturday.

19 THE COURT: Okay. I take it this was unknown to you
20 when the jury was selected last week.

21 JUROR NO. 4: Correct.

22 THE COURT: Okay. And did you indicate that
23 someone, probably someone other than you, has prepaid for this
24 trip?

25 JUROR NO. 4: Uh-huh, my father-in-law.

1 THE COURT: Your father-in-law has prepaid for this
2 trip. Okay. And I take it that it is your wish to
3 participate in this family event?

4 JUROR NO. 4: Yes.

5 THE COURT: And that would include you, your spouse,
6 your in-laws?

7 JUROR NO. 4: Uh-huh.

8 THE COURT: Anyone else?

9 JUROR NO. 4: My kids, my wife's sister and brother,
10 and their families.

11 THE COURT: Okay.

12 JUROR NO. 4: My wife's side.

13 THE COURT: And this is to a resort or location that
14 is outside of Maryland?

15 JUROR NO. 4: It's in Maine.

16 THE COURT: Thank you very much. You can return to
17 the jury room and thank you.

18 JUROR NO. 4: All right. Thank you.

19 (Jury left the courtroom.)

20 THE COURT: Mr. Martinez, what's your position?

21 MR. MARTINEZ: Your Honor, we hate to lose a jury
22 and seat an alternate so early in the trial, but under the
23 circumstances, we're certainly not going to stand in the way
24 of that juror attending that trip with his family, so we have
25 no objection to the Court excusing.

1 THE COURT: Your expectation is that this trial will
2 still be underway on the dates that he indicated, January 6th
3 through the 13th; is that correct?

4 MR. MARTINEZ: I don't want to definitively predict
5 that it won't. I think that if we're efficient it's possible
6 that we could wrap up our case in chief during that first
7 trial week of January. Some of that obviously depends on how
8 quickly we go and how long cross-examinations take and such.
9 But I don't know how long the defense case might take. I
10 don't know if there will be a defense case, so I don't want to
11 tell the Court with any kind of certainty that we're going to
12 be done by the time that juror goes on vacation.

13 THE COURT: Thank you. Mr. Enzinna.

14 MR. ENZINNA: Your Honor, I would note that
15 Juror No. 4 is one of, I think, only two or three males on the
16 jury. Also, I -- in light of Mr. Martinez's estimate with
17 regard to scheduling, I think it would be preferable to keep
18 Juror No. 4 and if we do get to the point where we are in
19 January and it does look like this case is going to go that
20 long, which frankly would surprise me, then we could replace
21 him with an alternate if necessary.

22 THE COURT: Thank you, Mr. Enzinna. Mr. Bussard.

23 MR. BUSSARD: That was my position exactly,
24 Your Honor. I don't have anything further to add.

25 THE COURT: Thank you. Mr. Francomano.

1 MR. FRANCOMANO: Nothing further, Your Honor.

2 THE COURT: Thank you. Juror No. 4 will be excused
3 and replaced by Alternate Juror No. 1. Alternate 1 will be
4 instructed to take the No. 4 seat. Juror No. 4 will be
5 excused by the courtroom deputy clerk. He has not been sworn,
6 so just ask him to gather up his things and excuse him.
7 Please pull him aside and have that conversation with him
8 privately, not in the presence of any other members of the
9 jury. Once you have accomplished that -- let's do this. Ask
10 Juror No. 4 to gather his things and come into the courtroom.
11 I'll excuse him, then we'll go from there.

12 THE CLERK: Yes, Your Honor.

13 (Jury entered the courtroom.)

14 THE COURT: Juror No. 4, you are excused from this
15 trial. Enjoy your ski trip and you may depart.

16 PROSPECTIVE JUROR: Thank you, sir.

17 (Jury left the courtroom.)

18 THE COURT: Ms. Powell, now, instruct Juror No. --
19 Alternate No. 1 that he becomes Juror No. 4. Instruct him
20 that he'll be seated in the 4th seat. And that all of the
21 other alternates shall move down the row in the back so that
22 the seats remain full except for the one closest to you.
23 Thank you.

24 (Jury entered the courtroom.)

25 MR. MARTINEZ: Your Honor, Agent Christy has just

1 brought an issue, and I apologize, the reason is the jury is
2 about to come out.

3 THE COURT: Yes.

4 MR. MARTINEZ: We got a witness list from
5 Mr. Johnson's counsel before trial that lists Keya Brady as a
6 potential defense witness. Ms. Christy has just identified
7 this individual in the courtroom as Ms. Brady. I confirmed
8 that with Mr. Enzinna. I think having asked Mr. Enzinna, I
9 think we're in agreement that the rule on sequestration of
10 witnesses will apply.

11 THE COURT: Court security officer will go in the
12 jury room, instruct the courtroom deputy not to bring the jury
13 into the courtroom until you come back in with that
14 instruction. Thank you, sir. In other words, get her
15 stopped.

16 Does the government request sequestration of
17 witnesses during this trial?

18 MR. MARTINEZ: We do.

19 THE COURT: One party having requested
20 sequestration -- thank you, sir. Is that door shut tight?
21 Thank you. One party having requested sequestration of
22 witnesses, the Court will grant the request. Anyone who
23 expects that they will give testimony during the trial of this
24 case because they have been notified by counsel for one of the
25 parties that they will be called as a witness in this case is

1 now instructed that they may not be in the courtroom during
2 opening statements, nor may they be in the courtroom during
3 the testimony of any other witness, nor may they discuss their
4 testimony with that of any other person reasonably known to
5 them to be a witness in this case until the trial is over.
6 Anyone who believes that they may be a witness is now
7 excluded.

8 Now, Counsel, I don't recognize your witnesses.
9 That's your responsibility. My having entered the order, if
10 you see someone in the courtroom who you believe is going to
11 be a witness in this case, it's your responsibility to get the
12 proceedings stopped until that person has left the courtroom.
13 And I do instruct all counsel over the course of the trial to
14 periodically scan the gallery and make sure that none of the
15 witnesses that you're planning to call are in the courtroom.

16 Any questions about the sequestration ruling,
17 Mr. Martinez?

18 MR. MARTINEZ: No.

19 THE COURT: Mr. Enzinna.

20 MR. ENZINNA: No, Your Honor. But may I just
21 explain to Ms. Brady what's going on.

22 THE COURT: Yes, absolutely. Mr. Bussard.

23 MR. BUSSARD: I understand, Your Honor.

24 THE COURT: Mr. Francomano.

25 MR. FRANCOMANO: Yes, Your Honor.

1 THE COURT: The court security officer can return to
2 the jury room and advise the courtroom deputy clerk that we're
3 ready for the jury. Thank you, sir.

4 Mr. Bussard, did defense counsel in the state case
5 have the firearm examined for ballistics or shells?

6 MR. BUSSARD: I don't know.

7 THE COURT: More later. You can remain seated.

8 (Jury entered the courtroom.)

9 THE COURT: Be seated, please. Good morning, ladies
10 and gentlemen. Sorry that we've had some details that we had
11 to sort out outside of your presence, which explains why we're
12 starting a little bit late this morning. Hopefully this will
13 not be a pattern. We are now ready to begin. The first order
14 of business is for the clerk to administer the oath to you
15 swearing you as the jury in this case. Ms. Powell.

16 THE CLERK: Members of the jury panel selected in
17 the present case, please raise your right hand to be placed
18 under oath.

19 (Jury sworn.)

20 THE CLERK: Jury sworn, Your Honor.

21 THE COURT: Thank you. You may be seated. Ladies
22 and gentlemen, in this case, at the government's request, a
23 grand jury has charged the defendants, Gerald Johnson,
24 Kenneth Jones, and Marquise McCants, with commission of the
25 crimes of conspiracy to participate in a racketeering

1 enterprise and conspiracy to distribute and possess with
2 intent to distribute certain controlled substances. In
3 addition, Gerald Johnson is charged with conspiracy to commit
4 murder in aid of racketeering, and murder in aid of
5 racketeering, and possession of ammunition by a felon.
6 Marquise McCants is also charged with possession of a firearm
7 by a felon. The defendants plead not guilty. And thus, they
8 may not be convicted on these charges unless and until after
9 the trial, you the jury, unanimously find them guilty beyond a
10 reasonable doubt.

11 The trial will proceed in the following way: Each
12 party has the right to make an opening statement for the
13 purpose of outlining for you what that party expects to prove.
14 The government's lawyer will make the first opening statement.
15 And then each defendant's lawyer may choose whether to make an
16 immediate opening statement or to wait to make an opening
17 statement later in the trial or not to make an opening
18 statement at all. The government will then present evidence.
19 After its case has been presented through witnesses and
20 exhibits, then each defendant will have an opportunity to
21 present evidence if he wishes. He's not required to do so.

22 If a defendant elects to present evidence, then the
23 government will be given an opportunity to present rebuttal
24 evidence in reply. Each witness is first examined by the
25 party who calls the witness to testify, and then the opposing

1 party is permitted to cross-examine the witness.

2 During the trial the lawyers may make objections to
3 the introduction of evidence or may make motions concerning
4 the law. Arguments in connection with objections or motions
5 are usually made out of the hearing of the jury either here at
6 the bench or after the jury has been excused from the
7 courtroom. This is because question of law and admissibility
8 of evidence do not involve the jury. They're decided by the
9 judge. It's the duty of a lawyer to make objections and
10 motions that the lawyer believes are proper. You should not
11 be influenced by the fact that a lawyer has made objections or
12 by the number of objections that have been made. You should
13 draw no conclusions from my rulings either as to the merits of
14 the case or as to my views regarding any witness or the case
15 itself.

16 After the conclusion of all of the evidence, the
17 lawyers will make their closing arguments. In their arguments
18 the lawyers will point out to you what they contend the
19 evidence has shown and the conclusions they would like you to
20 draw from the evidence. The government's lawyer will make the
21 first closing argument and then each defendants' lawyer will
22 make a closing argument. After the defendants' arguments, the
23 government will have the opportunity to make a final argument
24 in rebuttal to their arguments. What the lawyers say in their
25 opening statements, in their closing arguments, and in making

1 objections or motions during the trial, is not evidence.

2 The reason the government goes first in each
3 instance and the reason the government is allowed rebuttal
4 time in closing argument is because the government has the
5 burden of proof. After the conclusion of all of the evidence,
6 I will instruct you as to the law applicable to this case.
7 You must follow and apply the law as I will explain it to you.
8 Following my instructions you will retire to the jury room and
9 begin your deliberations. It will then be your function and
10 responsibility to decide the facts. You must base your
11 findings only upon the testimony, the exhibits received, the
12 stipulations of the parties, and any conclusions that may
13 fairly be drawn from that evidence.

14 You may not conduct any independent research, either
15 by using printed materials or electronic means, such as the
16 internet, about this case, its general or specific subject
17 matter, or anyone connected with the case. Do not visit the
18 scene of any incident mentioned in the testimony or seek
19 advice from friends or acquaintances about issues in this case
20 or otherwise conduct investigation outside the courtroom. The
21 reason for this is that you must decide the case only on the
22 evidence you've heard and seen in the courtroom and on nothing
23 else.

24 To reiterate ladies and gentlemen, it would be a
25 violation of your oaths as jurors if during the trial you were

1 to, say, conduct a Google search concerning a person or a
2 subject that is a part of this trial. Please don't do it.
3 Similarly, it would be improper for you to use an encyclopedia
4 to learn more about an issue before you or even to look up in
5 a dictionary a word that you hear in the courtroom. You must
6 decide the case on information presented to you here in court
7 and not based on information you acquire elsewhere.

8 The following general principles are intended to
9 assist you in judging the evidence and to guide you in the
10 performance of your duties as jurors during the course of the
11 trial. You are the sole judges of whether testimony should be
12 believed. In making this decision, you may apply your own
13 common sense and every day experiences. In determining
14 whether a witness should be believed, you should carefully
15 judge all the testimony and evidence and the circumstances
16 under which each witness has testified.

17 Among the factors you should consider are the
18 following: First, the witness's behavior on the stand and way
19 of testifying. Second, the witness's opportunity to see or
20 hear the things about which testimony was given. Third, the
21 accuracy of the witness's memory. Fourth, whether the witness
22 had a motive not to tell the truth. Fifth, whether the
23 witness has an interest in the outcome of the case. Sixth,
24 whether the witness's testimony was consistent. Seventh,
25 whether the witness's testimony was supported or contradicted

1 by other evidence. Eighth, whether and the extent to which
2 the witness's testimony in the Court differed from the
3 statements made by the witness on any previous occasion.

4 You need not believe any witness even though the
5 testimony is uncontradicted. You may believe all, part, or
6 none of the testimony of any given witness. You must consider
7 and decide this case fairly and impartially. You should not
8 be prejudiced for or against a person because of that person's
9 race, color, religion, age, national or ethnic origin,
10 political or social views, wealth or poverty. You should not
11 even consider such matters. You should not conclude from any
12 conduct or words of mine that I favor one party or another or
13 that I believe or disbelieve the testimony of any witness.
14 You, not I, are the sole judges of the believability of
15 witnesses and the weight of the evidence. You must not be
16 influenced to favor or oppose any person or party by my
17 conduct during the course of the trial.

18 Now, ladies and gentlemen, as we've discussed
19 previously, I think this case will take about nine weeks to
20 conclude. During that period there will be recesses and
21 adjournments of court when you will be excused. Some of these
22 through the holidays are going to be quite extensive, as I
23 discussed with you when we disclosed the schedule for the
24 trial. From this point forward, until the case is over and
25 you've rendered your verdict, you may not discuss the case

1 with anyone who's not on the jury. You may not discuss the
2 case even with each other during the trial. You must wait
3 until after you have heard all of the evidence, the closing
4 arguments, and my instructions as to the law. You may not
5 expose yourself to any news articles or reports that touch
6 upon this case or issues it presents or involving any of the
7 participants in the case.

8 In fairness to all of the parties to the case, you
9 should keep an open mind throughout the trial. You should
10 reach your final conclusions only during your deliberations
11 after having heard all of the evidence, my instructions as to
12 the law, and the lawyers' closing arguments. Until the trial
13 is over, you must avoid all contact of any kind with any of
14 the participants in the trial, except for common courtesies
15 such as the exchange of simple greetings. That includes the
16 parties, the lawyers, the witnesses, and any persons you see
17 in close contact with these individuals. Avoid all of them.

18 Please remember that you must not use the internet
19 or any device to communicate with anyone about the trial while
20 you're serving as jurors. During recesses when you are
21 outside of the courtroom, you may turn on your cell phone or
22 other device and contact family members or others about
23 matters that have no relation to this trial. While we're in
24 the courtroom, however, all electronic devices must be turned
25 off, not merely placed in silent or vibrate mode. We'll take

1 a moment now to let everybody check their electronic devices
2 one more time. Make sure the power switch is off, it's not
3 merely on silent or vibrate. Thank you, ladies and gentlemen.
4 All such devices must be turned off and may not be used while
5 the jury is deliberating upon its verdict in a few weeks when
6 it's given to you for deliberation.

7 Now, if anyone needs to deliver an urgent message to
8 you while we're in the courtroom, you might be concerned
9 because your electronic devices are turned off and you can't
10 receive a text message from your child or your parent or
11 someone who might be dependant upon you. So here's how we
12 handle that: You write down this telephone number and
13 Camille -- Ms. Powell will give it to you later as well, the
14 number is (410) 962-0950. That's my judicial assistant's
15 telephone number in my chambers, which is about 15 feet away
16 from where I'm sitting right back there. And if there was an
17 emergency and someone needed to contact you, they would call
18 that telephone number, and then my staff would send a note
19 into the courtroom immediately for me to see. And if it's an
20 emergency, we stop the proceedings and get the message to you
21 right away. So I don't want anyone to believe or fear that
22 they're sort of out of contact with their loved ones and
23 relatives in some sort of dangerous way. Just pass this
24 number out freely to your friends, family, whoever it is that
25 might need to reach you and tell them that if there's an

1 emergency, that's how they would contact you, if they can't,
2 you know, can't reach you on your cell.

3 Ladies and gentlemen, these restrictions are
4 necessary to ensure 100 percent attention during the trial and
5 ultimately to ensure a fair trial. Ladies and gentlemen,
6 notebooks have been provided to you for you to take notes.
7 You are not required or expected to take notes. The taking of
8 notes is purely optional. It's allowed where doing so is
9 helpful to you, but this advice about note taking, it's
10 important not to become so intent upon your note taking that
11 you miss other testimony from the witness stand because you're
12 trying so hard to get down what you just heard and you think
13 it's, you know, very important potentially to the process and
14 you want to make sure you get that written down, and then as a
15 consequence, you don't hear the next thing that was said from
16 the witness stand. So you have to reach a good balance there.
17 See if you can't -- if you want to take notes, make sure
18 you've got one ear still open to what's otherwise going on in
19 court.

20 One of the reasons why we have 12 people on a jury
21 is, that's 12 sets of eyes, 12 sets of ears, 12 collective
22 memories. And when it comes time to deliberate, our hope and
23 expectation is that with 12 of you sitting there and
24 listening, collectively you won't miss anything. And you can
25 kind of rely on that a little bit too, in terms of your fear

1 about remembering absolutely everything that happened.

2 Somebody else will remember and will jog your memory of what
3 you heard.

4 If you do take notes, at recesses in the proceedings
5 and at the end of the court's proceedings each day, please
6 close your notebook, place it in the folder that we provided
7 to you, close that up, and then leave that folder on your
8 chair in the jury box right here in the courtroom.

9 Okay. Ladies and gentlemen, we're ready to begin.
10 You'll recall the general game plan for the trial, which is
11 first opening statements, definitely from the government,
12 possibly from the defendants. After those opening statements
13 are completed, then the evidence will begin. In this case the
14 evidence will take many days to submit to you. It will occur
15 over many weeks carrying us probably all the way into January,
16 given the long breaks that we're going to take during
17 December. And then finally, when all of that evidence is
18 over, you'll hear the closing arguments or the summations from
19 counsel. And then last of all, you'll hear my, what are
20 called jury instructions, instructions to you on the law.

21 The evidence is what is going to take the greatest
22 amount of time. I suspect that the opening statements will be
23 finished today, probably easily, maybe into evidence today.
24 Down the road a ways, the closing arguments, also probably
25 wouldn't take anymore than a day. The jury instructions,

1 probably no more than half a day. So when we're talking to
2 you about a trial that's going to last as long as nine weeks,
3 the bulk of your time is going to be listening to testimony
4 and considering evidence. The other elements of the trial,
5 the opening statements, the closing arguments, and the jury
6 instructions, relatively speaking, don't take so long. Okay.
7 We're ready to go into that first phase, which is opening
8 statements. Mr. Martinez --

9 MR. FRANCOMANO: Your Honor, before we get to
10 opening statements, can we approach briefly?

11 THE COURT: Yes.

12 MR. FRANCOMANO: Thank you, Your Honor.

13 THE COURT: Mr. Johnson, can you hear me raise, your
14 hand if you can.

15 DEFENDANT JOHNSON: (Indicating.)

16 THE COURT: Mr. Jones, can you hear me, raise your
17 hand if you can.

18 DEFENDANT JONES: (Indicating.)

19 THE COURT: Mr. McCants, can you hear me, raise your
20 hand if you can hear me.

21 DEFENDANT McCANTS: (Indicating.)

22 THE COURT: All three defendants have indicated that
23 they can hear through the electronic earpieces.
24 Mr. Francomano.

25 MR. FRANCOMANO: Your Honor, one of our witnesses is

1 here in the courtroom. I just wanted to make sure that we can
2 have her removed.

3 THE COURT: Yes. So when that happens in the
4 future, unless there's something that would be obviously
5 inappropriate about it, the instruction is for counsel to just
6 sort of casually get up and move back to where the witness is.
7 I'll see you going near the gallery. I'll know what you're
8 doing. And you just, you know, get them out of there and come
9 back to your seat, hopefully without my having to say anything
10 to the jury. If we run into some kind of a more disruptive
11 situation, then I'll have to send the jury out. I don't want
12 to do that if we don't have to.

13 MR. FRANCOMANO: Okay. Thank you. I can go do
14 that?

15 THE COURT: Yes.

16 (The following proceedings were had in open court.)

17 THE COURT: Okay. I think we now have everything in
18 order. Mr. Martinez, are you ready to deliver the
19 government's opening statement?

20 MR. MARTINEZ: I am.

21 THE COURT: You may proceed.

22 MR. MARTINEZ: Ladies and gentlemen, good morning.
23 This case is about a violent, organized, and deeply entrenched
24 gang, the Black Guerilla Family's Greenmount Regime. This
25 case is about the activity; murders, robberies, shootings,

1 drug dealing, witness tampering, and witness intimidation in
2 which that gang engaged. Much of that activity happened in a
3 small neighborhood in East Baltimore just a few miles from
4 this courthouse between 2005 and 2017. This is a case about
5 three men; Gerald Johnson, also known as Geezy; Kenneth Jones,
6 also known as Slim; and Marquise McCants, also known as Digga,
7 who all agree to join and participate in this gang knowing
8 that they and other members of the gang would commit the kind
9 of crimes I just described. These men joined the gang knowing
10 that it ruled by the gun, knowing that it controlled street
11 corners and alleyways and used them as open air drug shops,
12 knowing that it robbed and killed outsiders who got in its
13 way, and knowing that the gang protected itself from ever
14 being accountable by terrorizing those who dared to cooperate
15 with the police.

16 What do we mean by terrorizing? During the course
17 of this trial, ladies and gentlemen, you will hear and see
18 evidence that here on Greenmount Avenue, terror is a bullet in
19 the head of a snitch, a bullet that's meant to send a message.
20 When the BGF controls a neighborhood, the rule of law and
21 those with the courage and decency to insist on its protection
22 are the enemy. Here's an example: The guy on the screen here
23 is Moses Malone. He was shot and killed by a BGF member named
24 Wesley Brown in May of 2013. Know why he got killed? Because
25 a few weeks prior to his death, he told the police that he had

1 been robbed and shot by Brown's half-brother and fellow member
2 of the BGF Greenmount Regime, Norman Handy.

3 Within a day or so of Malone's statement to the
4 police, the BGF Greenmount Regime learned that Malone was a
5 snitch who had implicated Handy in a crime. That meant Malone
6 had to be killed. You're going to learn, ladies and
7 gentlemen, that Malone's murder was green-lighted or
8 authorized by Gerald Johnson. You're going to hear from
9 witness after witness that Gerald Johnson called the shots in
10 the BGF Greenmount Regime. You're going to hear from Johnson
11 himself that he gets people shot just for running their
12 mouths. You're also going to hear that BGF had an ironclad
13 rule against snitching, which was punishable by death.

14 You'll hear that BGF members took an oath to protect
15 fellow comrades. And that breaking that oath was also
16 punishable by death. That's important. It means that the
17 responsibility for Moses Malone's murder doesn't end with the
18 man who pulled the trigger, Wesley Brown, or the man who
19 green-lighted the murder, Gerald Johnson. Responsibility
20 extends to other members of the gang including Mr. Jones and
21 Mr. McCants, who all joined the Greenmount Regime knowing that
22 people like Moses Malone, people who were brave enough to come
23 forward and seek justice, would be murdered by BGF, murdered
24 because they were witnesses.

25 Think of it this way: BGF was a company, murder was

1 part of its business plan. Mr. Jones and Mr. McCants were
2 hardworking, active, and well-informed employees. That will
3 be important later when we talk about the charges in this
4 case. But for now, let's back up a bit. I want to tell you
5 about the Black Guerilla Family or BGF. BGF is a nationwide
6 gang. It started as a prison gang. It was founded by this
7 guy, George Lester Jackson, an inmate at San Quentin Prison in
8 California in the late 1960s or early '70s. You'll sometimes
9 hear BGF called Jamaa. That's the Swahili word for family.
10 You'll sometimes hear the gang referred to as J for short. So
11 when you hear a person is J or he's in J, that means the
12 person is in BGF.

13 Here, you see Mr. Johnson with the word Jamaa
14 tattooed on his left forearm. Another way of referring to BGF
15 is 276. These are the alphanumeric members for BGF; B is the
16 second letter of the alphabet, G the seventh; F is the sixth.
17 Here's Mr. Jones with a 276 on his left shoulder. And here's
18 a 276 on the right-hand side of Mr. McCants's chest. You'll
19 see later that he's got another one on his arm. You'll see
20 that his e-mail address is even Digga276@yahoo.com. While
21 you're looking at this photo, note the picture of
22 George Lester Jackson. On the left side of Mr. McCants's
23 chest, in case there's any doubt that's him, his name is
24 written on either side of McCants's chest. You'll also see a
25 gorilla on the right side near his shoulder.

1 Ladies and gentlemen, you're going to hear in the
2 mid 1990s BGF made its way from California to the prisons of
3 Maryland. The gang started in Maryland anyway, in the
4 Maryland House of Corrections, which is now closed. The gang
5 then expanded to every single prison in the state. And you're
6 going to hear that in those prisons BGF members banded
7 together to control the prison economy. That includes
8 smuggling and the sale of contraband like marijuana, tobacco,
9 and cell phones. And you're going to hear from BGF members
10 during this trial who engaged in those activities, some who
11 engaged in those activities with these defendants.

12 So in the mid 2000s as some of the original and more
13 powerful BGF members began coming home from prison, BGF took
14 control of the Baltimore Streets. Over time, the gang set up
15 regimes, which you can think of as local chapters of a union,
16 throughout the city. The BGF Greenmount Regime is one of
17 those chapters. It's got its own unique history which we'll
18 tell you about in a moment. First, I want to talk more about
19 the structure of BGF and how the regimes are set up.

20 BGF's rank structure is similar to what you'd see in
21 the military. On the streets the guy at the top is the hodari
22 or the city-wide commander. Under him is a group of senior
23 members called bushman. These are like the four-star generals
24 of the gang. They control neighbors and they keep tabs on the
25 activities of various BGF regimes throughout the city. Now,

1 for the regimes. Within each regime is a bubble. This is the
2 immediate command structure for the group. The bubble
3 includes all the various positions that you see here,
4 including commander, lieutenant commander, minister of
5 defense, minister of education, and so on. Each of those
6 positions has a specialized responsibility. And you'll hear
7 about exactly what those people within the gang did from our
8 various witnesses who will testify in this case.

9 Under the bubble is the field. These are the rank
10 and file members or the soldiers within the regime. Now, each
11 and every BGF member is expected to know and follow a set of
12 rules. The rules are called the 22s and the 33s or together
13 the 55s. Here are some of the 22 rules of BGF: Never place
14 your hands on a brother. Never speak in vain or in public of
15 Jamaa. Never compromise the principles and concepts of J.
16 Every member must work together to show loyalty, honor, and
17 respect to keep the spirit alive and the fire burning. Never
18 play the homeboy factor or choose one comrade over another.
19 There are no big I's and little U's in Jamaa, everyone is
20 subject to discipline. You're going to hear, ladies and
21 gentlemen, that these rules were often honored in the breach
22 and you're going to hear about multiple instances in this case
23 in which BGF killed one another over petty internal gang
24 disputes.

25 Here are some examples of the 33 constitutions of

1 BGF: Once you pledge you take it to the grave. No revolving
2 doors. Once you pledge you're in for life. Never violate
3 protocol. Discipline comes in three forms: fines for minor
4 violations, beat downs for major, and death for extreme
5 situations. If a member is selected to carry out a directive,
6 which sometimes you'll hear referred to as a mission, he will
7 be given a proper interview to carry out the directive and if
8 he refuses or fails to carry out the directive, then he
9 becomes the target. If you're given a mission, say, to kill
10 someone or execute a hit and you refused to do it, you become
11 the target of the hit. And lastly, this one's important, we
12 do not participate in snitching or working with the police.

13 BGF members also take an oath, sometimes called the
14 Oatmeal or the Two S's and the Three I's. The oath is this:
15 Should I ever be untrue and forsake the chosen few, this oath
16 shall kill me. Should I ever become lax in discipline at
17 times of strife, this oath shall kill me. If ever I sought to
18 do harm or allow harm to come to my brother, this oath shall
19 kill me. If ever at any time I refuse or deny to give
20 assistance to this oath, this oath shall kill me. If ever I
21 reveal the sworn secrets of this oath, this oath shall kill
22 me.

23 Listen to that. Every single line ends with "this
24 oath shall kill me." And you saw in the 33s that you can be
25 killed for violating the rules or forced to kill someone as

1 part of your membership in BGF. What the evidence in this
2 case will show you, ladies and gentlemen, is that it's
3 impossible to join BGF without understanding that at some
4 point in time you or some other member is going to be called
5 upon to take a life. When you join BGF, murder is part of the
6 deal.

7 Now, let's talk about the BGF Greenmount Regime,
8 which was originally called the Young Guerilla Family or YGF.
9 The evidence will show you that YGF started in 2005. At the
10 beginning it was basically a neighborhood gang. Its members
11 were mostly younger guys from the 22-, 23-, 2400 blocks of
12 Guilford Avenue and Barclay Street, which you can see on the
13 map right here. You're going to hear from multiple witnesses,
14 ladies and gentlemen, that Mr. Johnson and Mr. Jones were
15 original members of the YGF. In fact, you'll hear that
16 Mr. Johnson has admitted being a member of that gang. You'll
17 also see a Youtube video in which Mr. Johnson brags that YGF
18 was the murder king. The evidence will show you that he was
19 right. Several witnesses will tell you that from the very
20 beginning of YGF, Mr. Johnson was the one in charge. They
21 will tell you that Mr. Jones was one of the gang's enforcers.
22 And Mr. McCants, or Digga, was relatively young at the time
23 but still tight with Johnson and closely associated with the
24 gang.

25 You're going to hear that between 2005 and 2007, YGF

1 did a lot of wild stuff. Much of it involving the same cast
2 of characters: Mr. Johnson, Mr. Jones, Kenneth Faison, also
3 known as Roscoe, this is Mr. Johnson's brother. David Hunter
4 on the left here and Joseph Bonds. You see them both throwing
5 up the X, which you'll learn is a symbol or sign for BGF. And
6 both of these gentleman are wearing George Lester Jackson
7 T-shirts. I told you about him earlier. He's one of the
8 founders of the gang. You're going to hear that these guys
9 and some other YGF members sold drugs, including crack,
10 heroin, marijuana, and ecstasy, basically every day. You'll
11 see the houses they used to store, package, and stash drugs.
12 You'll hear about where they sold drugs and you'll hear from
13 multiple witnesses who participated. You'll also hear about
14 robberies that YGF and its members committed, many of them
15 armed. Not just in the Greenmount neighborhood, all over
16 Baltimore City.

17 But it wasn't the drug dealing and it wasn't the
18 robberies that earned YGF its reputation. It was murders and
19 shootings, many of which you'll hear about during this trial.
20 One of those murders happened in 2007 and the victim of that
21 murder was a guy named Gregory Rochester or Craig Mack.
22 That's him here. He was a YGF associate who sometimes dealt,
23 packaged, and stored drugs with the gang. The evidence in
24 this case will show you, ladies and gentlemen, that on January
25 9th of 2007, Mr. Rochester was murdered. The evidence will

1 show you that Mr. Jones and a guy named Charles Pace, also
2 known as Foo, murdered Gregory Rochester, that they did it in
3 a YGF stash house on East 25th Street, and that Mr. Johnson
4 authorized the murder both because he believed that.

5 Mr. Rochester was a snitch and that he had stolen
6 drugs from the gang. You will learn, ladies and gentlemen,
7 that by mid 2007, senior members of BGF were starting to pay
8 attention to YGF. They were starting to pay attention because
9 they thought that YGF was out of control. They thought that
10 YGF was engaged in reckless violence. And they thought that
11 YGF, which held itself out as a sort of junior varsity version
12 of BGF, was exposing BGF to unwanted heat from the police.

13 So around 2007, the senior members of BGF issued an
14 ultimatum to YGF and the ultimatum was this: YGF could either
15 shut down or its members could join BGF and follow its rules.
16 You will learn that ultimately nearly every member of YGF,
17 including Mr. Johnson and Mr. Jones, crossed over to BGF and
18 became full-fledged members of the gang. One of the witnesses
19 who will tell you about this merger or crossover between BGF
20 and YGF is a BGF member named Mike Gray. Gray was one of the
21 original BGF members in Maryland. He joined the gang at the
22 Maryland House of Corrections, the cut, the first prison where
23 the gang got started. He's a bushman. And he eventually
24 became the city-wide commander of BGF, the hodari, the guy who
25 called the shots on the streets.

1 When Mike Gray testifies, and he'll testify early in
2 this trial, he'll explain much of what we talked about over
3 the last couple of minutes: the history and the structure of
4 BGF, its rules, its oath, the way that regimes are set up.
5 He'll explain that he personally set up the BGF Greenmount
6 Regime. And he'll tell you that as long as he had anything to
7 do with the Greenmount Regime, Geezy, Gerald Johnson was the
8 guy in charge. So now let's pick up after the merger.

9 And you may be wondering, did this merger or
10 crossover between BGF and YGF change anything? Did YGF change
11 its tune once it joined BGF and became the Greenmount Regime?
12 The answer is, and the evidence will show you, not really.
13 You will learn that the gang and its members kept dealing the
14 same drugs in the same neighborhood. You're going to hear
15 about and you're going to see drugs that were seized from both
16 the gang and its customers from 2007 going forward. You're
17 going to hear from multiple witnesses, both member and
18 associates of the gang, who will tell you about their drug
19 dealing activities. The same is true of the robberies.
20 You're going to hear that members of the Greenmount Regime
21 kept committing robberies both inside and outside the
22 Greenmount neighborhood.

23 You're going to hear, for example, that Mr. McCants,
24 on August 26th, 2010, was caught while committing an armed
25 home invasion robbery up in Cecil County. The day after he

1 was arrested, Wesley Brown, the guy who I mentioned earlier,
2 shot Moses Malone in May of 2013 and a fellow member of the
3 Greenmount Regime posted this on Facebook: Free Digga. So
4 the robbery might have happened up in Cecil County, but back
5 at BGF headquarters, McCants's fellow gang members were
6 definitely keeping tabs on his criminal exploits. So the drug
7 dealing continued, the robberies continued, and so did the
8 murders and shootings. You're going to hear about several
9 murders and shootings that took place for which the BGF
10 Greenmount Regime was responsible between 2011 and 2017.

11 You will hear, for example, that in June of 2011,
12 this guy, Henry Mills, also known as Nique, was gunned down
13 execution style in broad daylight on a busy city street in the
14 2400 block of Greenmount Avenue.

15 You will learn and the evidence will show you that
16 Mr. Mills was killed by David Hunter, a YGF and later BGF
17 member who we mentioned a moment ago. He was the guy next to
18 Joseph Bonds making the X in the George Lester Jackson
19 T-shirt. You're going to see, ladies and gentlemen, that
20 within hours of Mr. Mills's murder, David Hunter, Mr. Johnson,
21 and several other members of the gang participated in a BGF
22 gang meeting at a park on Greenmount Avenue that was caught by
23 a closed-circuit television camera. You'll watch as during
24 that meeting Mr. Hunter's congratulated by Mr. Johnson and
25 others for a job well done. And you'll see that on the very

1 day of the murder Mr. Johnson posted this on his Facebook
2 page: Shootouts similar to Wild West, broad daylight without
3 a vest. You live and you learn. Value your life and protect
4 it by all means. DBD. Let that hammer go or go with it, you
5 dig me. Get judged by 12, my N-words, the odds are better
6 than 6.

7 Six years later here we are. Geezy is being judged
8 by 12. You are the 12, plus the five of you sitting as
9 alternates. And you're going to get to see and hear what this
10 defendant and what his gang were all about.

11 Speaking of the gang, you're going to learn that
12 after the merger or the cross over between YGF and BGF, the
13 original members of YGF, including Mr. Johnson and Mr. Jones,
14 were joined by a new generation. These include the following
15 members of the Greenmount Regime, many of whom we've mentioned
16 already. Here's Wesley Brown or Wes or Coasta. He's the guy
17 who shot Moses Malone in 2013 to prevent him from testifying
18 in a state case against his brother Norman Handy. This is him
19 wearing a sweatshirt that says "fuck a rat." You can see the
20 rat here, it's Mickey Mouse caught in a trap dead. You're
21 going to learn, if you don't know already, that a rat is a
22 snitch, someone who talks to a police.

23 You're also going to learn that Mr. Johnson
24 re-posted this photograph of Mr. Brown on his Instagram
25 account after Mr. Brown was acquitted of murder in state court

1 in the fall of 2015. This is Norman Handy or Norm. As you've
2 heard, he's the one who robbed and shot Moses Malone in the
3 first place, which is why Wesley Brown killed him to keep him
4 from testifying. After Wesley Brown murdered Moses Malone,
5 the state-attempted murder case against Mr. Handy was
6 dismissed.

7 On the right here is Montel Harvey or Telly. You're
8 going to learn that he sold drugs and that he also committed
9 acts of violence, including a shooting outside a crowded
10 nightclub for the BGF Greenmount Regime. You see Wesley Brown
11 on the left there. In the middle is a guy named Sean Greg or
12 Hood. You'll learn that Hood engaged in drug dealing,
13 including with Mr. McCants in the spring of 2016.

14 You're also going to learn that he murdered a guy
15 named Willy Ben Miller in June of 2013. That murder was part
16 of a violent dispute within the BGF Greenmount Regime, which
17 you'll hear more about in just a moment. At this point you
18 may be wondering, why aren't all these other guys on trial,
19 what happened to them? The judge will tell you later and
20 we'll tell you now not to worry about it. But keep in mind
21 that you need to know who they were and what they did because
22 under the law someone who participates in a conspiracy can be
23 held accountable for the acts of their co-conspirators so long
24 as those acts were foreseeable.

25 So next among the gang's younger crew is

1 Mr. McCants, Digga. Here he is throwing up the X for BGF.
2 You're going to hear about robberies he committed like the one
3 in Cecil County in 2010. You're going to hear wiretap calls
4 and see text messages in which he talked about dealing drugs.
5 And you're going to hear and see evidence that he shot a guy
6 named Gregory Bess near the intersection of Greenmount and
7 North Avenues on the night he was arrested in February 2017.
8 He was a fugitive from law enforcement at the time.

9 So now let's get back to the timeline. The evidence
10 will show you that after these younger guys joined the
11 Greenmount Regime they all became more and more violent and
12 more and more independent. So by the spring of 2013, the
13 gang's younger members started butting heads with the older
14 guys in the gang, including Slay, Joseph Bonds, whose picture
15 you saw earlier and Willie, Ben Miller. The situation came to
16 a head on May 7th, 2013 when this guy, Trevon White, here he
17 is. You guys ought to be getting familiar with that sign by
18 now. You're going to see a lot more of that. This guy,
19 Trevon White, on May 7th, 2013, was shot and killed in the 300
20 block of East 22nd street.

21 Country was an up and coming younger member, an
22 enforcer, in the Greenmount Regime. The evidence will show
23 you that Mr. Jones and Ben Miller were part of a group that
24 were responsible for his murder. Now, Country was especially
25 close with some of the younger guys in the gang, including

1 Wesley Brown, Montel Harvey, and Hood. You're going to hear
2 that as retaliation for Country's murder, Hood and a guy named
3 Chop, who's going to testify in this case, walked Ben Miller
4 down to Maryland Avenue here, where Hood put a bullet in his
5 head. You're going to hear that Hood killed Ben because he
6 suspected, suspected that Ben had given Mr. Jones the gun that
7 Mr. Jones used to shoot Country to death.

8 That's how justice works in BGF. You don't get a
9 trial, you don't get a jury. Get shot in the head and left to
10 die in an alley. Here's Ben throwing up the X next to Geezy,
11 who as it happens, has the picture you just saw of Country
12 throwing up the X on his T-shirt. Ladies and gentlemen,
13 you're going to hear that on the day after Ben's murder other
14 members of the Greenmount Regime already knew what had
15 happened and why. That's going to show you how all of these
16 murders that happened in the gang are foreseeable consequences
17 of what they do.

18 You're going to hear, for example, a recorded jail
19 call between Telly, Montel Harvey, whose picture you just saw,
20 and Norman Handy. And in that call you're going to hear Telly
21 explain to Norman, "Motherfucking Ben got his motherfucking
22 issue last night." When Norman asked what did Ben do to die,
23 Telly explained that he had something to do with Country's
24 death.

25 "Yo had to go," Telly said, "yo had something to do

1 with that." That's how justice works in BGF. You're also
2 going to hear testimony that later in the summer of 2013,
3 Telly, Hood, and others tried to shoot at Slay, Mr. Jones.
4 But they missed. Again, they were shooting at Slay because
5 they believed correctly, that he was the one who killed
6 Country on May 7th, 2013.

7 You're going to hear jail calls where Telly tells
8 Wesley Brown and Norman Handy that he and others went looking
9 for Slay with a gun. You're going to learn that Slay believed
10 incorrectly that this guy, Lamontae Smith, had been involved
11 in the attempt on his life. Lamontae Smith also goes by the
12 nickname Chop. Here he is with Geezy.

13 Ladies and gentlemen, the evidence is going to show
14 you that on October 5th, 2013, Mr. Jones tried to kill Chop.
15 A shooting in the arm of the 300 block of East 24th Street.
16 Fortunately Chop survived and he himself will tell you how
17 Mr. Jones tried to kill him. That brings us to the fall of
18 2013. What happens next? Well, Mr. Johnson and others in the
19 Greenmount Regime, including Wesley Brown and Mr. Jones, were
20 prosecuted in state court. We'll tell you now that for the
21 most part the state case failed. We'll tell you now that
22 Mr. Johnson was acquitted in the fall of 2015. This time he
23 won't with so lucky.

24 So what happened after the acquittal? Well, Geezy
25 went right back to Greenmount. Here he is counting his money.

1 You're going to hear that after he went back to Greenmount,
2 one of the first things Geezy did was participate in the
3 filming of a Youtube video, which he called out two of the
4 witnesses, both of whom you'll hear from: James Cornish, also
5 known as Nod, and Christopher Meadows, also known as Chris.
6 Both of these guys testified against Mr. Johnson in state
7 court. You're going to see the video where Mr. Johnson says,
8 "Nod, you know what you did. Chris, you know what you did.
9 N-words on the stand. N-words on the stand like this.
10 N-words crazy." You'll see him wag his finger at the camera.

11 Ladies and gentlemen, you will learn that those
12 statements and those gestures send the very same message that
13 Wesley Brown sent when he shot Moses Malone in 2013: Snitch
14 on BGF and you will die. Put it another way: You have the
15 backbone to take the witness stand, to insist on this system
16 of justice instead of the one that handed death sentences to
17 Ben Miller, to Gregory Rochester, and to Moses Malone. Well,
18 Mr. Johnson and the BGF are coming for you.

19 What else did Mr. Johnson do after the acquittal?
20 Kept dealing drugs, including pills and cocaine and living the
21 BGF life. He went right on living that life until June of
22 2016. The evidence will show you that on June 30th, 2016 he
23 was stopped by Baltimore police officers driving on a
24 suspended license and that he and his car were searched. And
25 during the stop the officers recovered 7 rounds of .45 caliber

1 ammunition that were hidden inside a latex glove in the trunk
2 of the car. They also recovered drug paraphernalia both from
3 the car and from Mr. Johnson.

4 Perhaps most importantly, they also took
5 Mr. Johnson's cell phone and you're going to see the contents
6 of that cell phone. You're going to see that they include
7 text messages and photographs and how Mr. Johnson discussed
8 drugs, guns, and ammunition, including .45 caliber ammunition.
9 They also include a video in which Mr. Johnson and their drug
10 dealing confederates count their money in a corner store near
11 Greenmount and North. That's just the tip of the iceberg.

12 Let's fast forward a little bit and talk more about
13 Digga, Mr. McCants. You're going to hear that ATF started
14 making arrests in this case in November 2016. But Digga was
15 nowhere to be found, so the ATF designated him a fugitive. He
16 remained a fugitive until January of this year and that's when
17 he was caught on an FBI wiretap. You'll hear calls from that
18 wiretap yourself and you'll hear that in some of the calls
19 Mr. McCants talks about drug dealing. In others he talks
20 about planning a shooting. You're going to hear him looking
21 for a guy on Greenmount Avenue. You're going to hear him say
22 that the guy was clutching and strapped when he found him.

23 Then you'll hear a series of calls on February 4th,
24 2017 in which Mr. McCants planned to go looking for the guy to
25 take him out. Ladies and gentlemen, you're going to learn and

1 the evidence will show that based on those calls, law
2 enforcement officers went to the phone company and they got
3 ping data, a real-time location information for Mr. McCants's
4 cell phone. You're going to see that the first ping they got
5 put the phone here, near the intersection of Greenmount and
6 North on February 4th, 2017 at 10:50 p.m. And you're going to
7 learn that almost exactly the same time as the ping hit, a guy
8 Gregory Bess was shot seven times with a .40 caliber handgun
9 right at that intersection.

10 So after the shooting the officers kept tracking
11 Mr. McCants's phone, and they tracked it here to
12 5617 Pioneer Drive. The officers converged on this house,
13 they surrounded it, and they tried to get Mr. McCants to come
14 out. You're going to hear that Mr. McCants tried to escape
15 climbing through a second floor window on the rear of the
16 house. Eventually he changed his mind, went back inside, and
17 after some negotiation he agreed to come out. When he came
18 out, the officers went inside and conducted a search. Inside
19 the house they found scales, sifters, gel caps, other drug
20 paraphernalia, as well as .40 caliber ammunition. You're
21 going to hear that they did not, at least during that search,
22 find a .40 caliber gun in the house. But the evidence will
23 show you that there was a .40 caliber gun in this house.

24 After Mr. McCants was arrested, he made several
25 phone calls from jail, which he told his associates to go back

1 to PDR, Pioneer Drive, and to look for the "willow," the gun.
2 One particular call you'll hear him tell his associates in
3 coded language, or not-so-coded language really, where to
4 look. But the police beat Digga's associates to the punch.
5 On February 9th having listened to the jail calls, they went
6 back to PDR, Pioneer Drive. And they found the willow hidden
7 in a hole behind a bathroom wall.

8 You'll see, ladies and gentlemen, that the willow
9 was not a willow, but instead a .40 caliber disassembled Ruger
10 handgun. You will learn that officers submitted that
11 .40 caliber handgun for ballistics testing and you'll learn
12 about the ballistic connection between that handgun and the
13 shooting of Gregory Bess at Greenmount and North on the night
14 of Mr. McCants's arrest just hours before he agreed to come
15 out of that house and was taken into custody. That's not all
16 you'll hear about Digga or Mr. McCants. There's going to be
17 other evidence including his own statements that will connect
18 him to multiple other guns and violent crimes.

19 So at the end of this case, ladies and gentlemen,
20 you're going to be asked to decide whether these defendants
21 are guilty of a crime. So you should probably know what
22 crimes they're charged with. All three defendants are charged
23 in Count 1 with conspiring to participate in a racketeering
24 enterprise. They are also charged in Count 2 with conspiring
25 to traffic in certain controlled substances. Counts 3 and 4,

1 Mr. Johnson alone is charged with conspiracy to commit murder
2 as well as murder in aid of racketeering. Both of these
3 counts relate to the murder of the witness in 2013, Moses
4 Malone, who we told you about earlier. Count 7, Mr. Johnson
5 is charged with being a felon in possession of ammunition.

6 This count is based on the seven rounds of .40
7 caliber ammo recovered from his car in June 2016. You're
8 going to hear testimony and see evidence about that. Count 8,
9 Mr. McCants is charged with being a felon in possession of a
10 firearm. This is based on the willow, the .40 caliber handgun
11 that was recovered from Pioneer Drive that you just heard
12 about.

13 I want to take a few moments to talk about Count 1,
14 the racketeering conspiracy. So the defendants are charged
15 with conspiring to participate in a racketeering enterprise
16 and you're going to learn that the enterprise is the BGF
17 Greenmount Regime. These are the elements of the crime:
18 Needs to be an agreement between two or more people to
19 participant in an enterprise that would affect interstate
20 commerce through a pattern of racketeering activity, has to be
21 proven that the defendants knowingly and willfully became a
22 member of the agreement, and that the defendant or some other
23 member of the conspiracy agreed to commit two racketeering
24 acts.

25 So let's focus on what we need to prove and what we

1 don't need to prove so that you know what to look for as the
2 case goes forward. We need to prove an agreement between two
3 or more people -- that two or more people joined the
4 BGF Greenmount Regime knowing that some member would commit
5 two racketeering acts. Importantly, we don't need to prove
6 that a particular crime would be committed, just a category or
7 kind of crime. We'll talk about those in a moment. Keep in
8 mind, ladies and gentlemen, this is important. We don't need
9 to prove for purposes of a racketeering conspiracy that any of
10 these defendants dealt a gram of drugs or that they committed
11 a single violent crime, although we will, and the evidence
12 will show you that they did.

13 All we need to prove is they agreed by joining the
14 BGF Greenmount Regime that some other member, not necessarily
15 them, would commit the kinds of crimes we're about to show
16 you. So to make it real simple, we need to prove that the
17 gang existed, that it did all these bad things we're about to
18 talk about, and that the defendants were members knowing that
19 the gang would do all those bad things.

20 So these are the predicate crimes, the bad things:
21 murder, this includes attempted murder, conspiracy to commit
22 murder, robbery, drug trafficking, and then tampering with or
23 retaliating against a victim, witness, or informant. Now, as
24 you think about these predicates, especially murder, keep in
25 the back of your mind the BGF oath, which you heard about a

1 few minutes ago. Keep in the back of your mind its repeated
2 use of the phrase "this oath shall kill me." Also remember
3 some of the 33 constitutions of BGF, including the ones that
4 say discipline could come in the form of death and that
5 members that refuse a directive or a mission become the target
6 of the mission themselves.

7 That oath and those rules are important, ladies and
8 gentlemen, because they show the moment you join BGF you know
9 that you might be called upon to kill someone who crosses the
10 gang or that another member might be called upon to kill you.
11 In other words, you join knowing that if a member violates the
12 BGF oath or certain of the 33s, he will be killed and that
13 will be a racketeering act.

14 What is a racketeering enterprise? Well, the
15 evidence will show you that the BGF Greenmount Regime was
16 this: A group of people who associated together for a common
17 purpose engaging in a course of conduct over a period of time.
18 This group of people, in addition to having a common purpose,
19 must have an ongoing organization, whether formal or informal
20 and must have personnel who function as a continuing unit.
21 This group of people does not have to be a legally recognized
22 entity such as a partnership or corporation. This group may
23 be organized for a legitimate and lawful purpose or it may be
24 organized as here for an unlawful purpose.

25 You also heard earlier that the racketeering

1 enterprise has to affect interstate or foreign commerce. What
2 does it mean to do that? Well, you're going to hear that the
3 enterprise dealt drugs, that it used cell phones to further
4 its illegal activities. That's evidence that would affect
5 interstate commerce. So in the drug conspiracy count all
6 three defendants are charged with conspiring to distribute and
7 possess with intent to distribute 280 grams or more of crack
8 cocaine, 100 grams or more of heroin, and quantities of powder
9 cocaine, Oxycodone, and marijuana. These are the elements of
10 that crime.

11 And again, it's important to keep in mind here that
12 the crime charged here is a conspiracy, it's an agreement.
13 It's not the actual drug deals or drug distributions
14 themselves. You are going to hear evidence that each of these
15 defendants did deal drugs themselves. But it's worth noting
16 that you can be part of a drug conspiracy without ever
17 touching the drugs. You can discuss a drug deal, you can
18 impose discipline if someone in your drug organization steps
19 out of line, or you can tax a rival drug dealer or commit an
20 act of violence to protect your drug organization's character.
21 Those are examples, but you're going to hear about just those
22 kinds of examples during this case.

23 These are Counts 3 and 4, and again, these are based
24 on the murder of Moses Malone. Mr. Johnson alone is charged
25 in these counts. We've discussed Malone's murder already and

1 you're going to hear much more about it during this case,
2 likely during the second and third weeks of the trial.
3 Finally, in Count 7 and 8, as I mentioned, Mr. Johnson and
4 Mr. McCants are charged with being felons in possession of
5 ammunition in Mr. Johnson's case, and of a firearm in
6 Mr. McCants's case. These are the elements of those offenses.

7 So how are we going to prove these crimes beyond a
8 reasonable doubt? We're going to do it by presenting you with
9 a literal truckload of evidence and it's going to come in a
10 variety of forms. First you're going to hear from several
11 witnesses, many of them are members of BGF, many were bushmen,
12 many were members of the Greenmount Regime. You should know
13 now, ladies and gentlemen, that many of these witnesses
14 committed serious crimes. They robbed, shot, they dealt
15 drugs. They helped these defendants in the Greenmount Regime
16 terrorize a neighborhood in the city. You're not going to
17 like these witnesses. But they're the ones who know what the
18 Greenmount Regime did, what these defendants did, and how they
19 did it.

20 Fact of the matter is, ladies and gentlemen, that if
21 you want to know what happens in the inner circles of a
22 criminal gang, gang members are going to be your witnesses.
23 You should also know that some but not all of the witnesses
24 that you're going to hear from, the gang members, have pled
25 guilty in other cases entered into cooperation agreements with

1 the government. Those witnesses haven't been sentenced yet
2 and they're testifying here because they're hoping for
3 leniency when they are sentenced, so you should consider their
4 testimony very carefully. But as you consider their
5 testimony, keep in mind or consider whether that testimony is
6 corroborated, whether it's consistent with other evidence that
7 you're going to see and hear.

8 For example, you're going to hear from other
9 witnesses too. You're going to hear from members of the
10 community and victims of the defendant's crimes. You're going
11 to hear from law enforcement officers who responded to
12 murders, robbery, and shootings, as well as other officers who
13 executed search warrants at various locations. You're going
14 to hear from ballistic experts who examined the firearms and
15 bullets and casings that were associated with the defendants'
16 violent crimes. You're also going to see physical evidence.
17 You're going to see the guns and ammunition the defendants
18 carried with them to protect their gang and its turf. You're
19 going to see the drugs they distributed, as well as the
20 paraphernalia that they used to package and store those drugs.

21 You will see, and you've already seen to some
22 extent, how the defendants mark themselves with tattoos to
23 show off their affiliation and membership in the gang. You're
24 going to see photos and videos, many from cell phones and
25 social media that further show the defendants' association

1 with BGF, the Greenmount Regime, and each other. You'll also
2 see photos from crime scenes.

3 Finally, at least for now, ladies and gentleman,
4 you're going to hear the defendants' own words. You're going
5 to hear the words of their co-conspirators. You're going to
6 see text messages they sent, you're going to see what they
7 posted on social media, and you'll hear recorded
8 conversations, including jail and wiretap calls, including
9 some other recorded conversations in which these defendants
10 participated.

11 So ladies and gentlemen, to wrap up, as all the
12 evidence comes in, use your common sense and think about how
13 each piece of the puzzle backs up and builds upon the next.
14 You're going to see that these defendants are guilty beyond a
15 reasonable doubt. Before long you're going to see that the
16 evidence in this case is overwhelming, not because we told
17 you, because that's what the evidence will tell you. That's
18 what it's going to show. So at the end of this case we're
19 going to come back before you and we're going to ask you to
20 return a verdict, the only verdict that's consistent with all
21 the evidence in this case, and that's a verdict of guilty on
22 all counts. Thank you.

23 THE COURT: Thank you, Mr. Martinez. Ladies and
24 gentlemen, we'll take our morning break now. During this
25 recess do not discuss the case with anyone. Do not discuss it

1 even among yourselves. You must wait until after you've heard
2 all the evidence, the closing arguments, and my instructions
3 as to the law. Do not allow yourselves to be exposed to any
4 news articles or reports that touch upon this case or the
5 issues it presents or articles or reports that relate to any
6 of the participants in the case. Avoid all contact with any
7 of the participants in the trial. Do not make any independent
8 investigation of the law or the facts of the case. Do not
9 look up anything on the internet. Do not consult an
10 encyclopedia or a dictionary. We'll take just under 15
11 minutes and we'll return at 11:25. Please stand for the jury.
12 Please take the jury out.

13 (Jury left the courtroom.)

14 THE COURT: Will there be an opening statement for
15 Mr. Johnson?

16 MR. ENZINNA: Yes, Your Honor.

17 THE COURT: Who will deliver it?

18 MR. ENZINNA: I will.

19 THE COURT: How about for Mr. Jones?

20 MR. BUSSARD: There will be, Your Honor.

21 THE COURT: And Mr. McCants.

22 MR. FRANCOMANO: Yes, Your Honor.

23 THE COURT: And all three of you plan to deliver
24 them immediately or are any of you waiting until the start of
25 your case?

1 MR. ENZINNA: Today, Your Honor.

2 MR. BUSSARD: Today.

3 MR. FRANCOMANO: Today, Your Honor.

4 THE COURT: We're in recess until 11:25.

5 (A recess was taken.)

6 THE COURT: Are we ready for the jury?

7 MR. MARTINEZ: Yes, Your Honor.

8 THE COURT: Mr. Enzinna, Counsel.

9 MR. ENZINNA: Yes, Your Honor.

10 THE COURT: Let's bring them.

11 Electronics, Mr. Enzinna.

12 MR. ENZINNA: All ready.

13 (Jury entered the courtroom.)

14 THE COURT: Be seated, please. Mr. Enzinna, on
15 behalf of Mr. Johnson, do you wish to make an opening
16 statement?

17 MR. ENZINNA: Yes, Your Honor.

18 THE COURT: You may proceed.

19 MR. ENZINNA: Thank you.

20 Good morning, ladies and gentlemen. Thank you for
21 serving on the jury in this case. My name is Paul Enzinna and
22 with my colleague, Jeffrey O'Toole, I represent one of the
23 defendants in this case, Gerald Johnson. Mr. Martinez
24 introduced you to the Greenmount neighborhood this morning.
25 It's not very far from here. It's only about two miles from

1 the courthouse, but it is a world that I think is very
2 different from the world that most if not all of you live in.
3 It's a chaotic world. It is a violent world. It is a
4 dangerous world. Drugs are everywhere, guns are everywhere,
5 young men are killed with appalling frequency. You will see
6 evidence in this case; evidence of drugs, evidence of guns,
7 evidence of assaults, evidence of murders, evidence of
8 shootings that will shock you, disturb you, and possibly even
9 frighten you.

10 Gerald Johnson grew up in Greenmount and he's a
11 product of Greenmount. And the government is going to put on
12 evidence in this case that Mr. Johnson broke the law. They've
13 accused him of robbing and assaulting an individual; they've
14 accused him of being involved with illegal narcotics; they've
15 accused him of attempting to shoot people. But what's
16 important to remember is that Mr. Johnson is not charged with
17 those acts. Mr. Martinez showed you the charges in this case
18 and the charges are very specific and I'm going to come back
19 to that later.

20 One of the things that Mr. Martinez told you was --
21 when he showed you the charges, he said he showed you what
22 they don't have to prove. And he said, "We don't have to
23 prove that anybody, any individual, sold any drugs. We don't
24 have to prove that anybody shot anybody", and so on and so
25 forth. The converse of that is true as well. The mere fact

1 that an individual may have broken the law, may have sold
2 drugs, may have assaulted somebody, does not make them a
3 member of a conspiracy that does those same things. And
4 that's the charge here. The charge is conspiracy.

5 Now, an opening statement is kind of like the
6 picture on the box of the jigsaw puzzle. It tells you what
7 you're trying to get to. But anybody who's ever done a jigsaw
8 puzzle knows you don't always get there. Sometimes there's --
9 you get can't the pieces together, sometimes you put the
10 pieces in the wrong place, sometimes pieces are missing.
11 Those pieces, of course, are the evidence in this case. And
12 you in the end will decide whether the picture the government
13 puts together in this trial is the picture they told you about
14 in the opening statement.

15 That picture is very important though because that
16 picture sets the ground rules. It tells you what -- as the
17 judge said, what the government is trying to prove and what
18 they have to prove to convict in this case. Now, I could
19 take -- let's say, I took 100 pieces of the jigsaw puzzle and
20 I put them all together in a perfect order and I had a perfect
21 image of George Washington's face. That's great, unless it's
22 a 500-piece puzzle and the picture on the box is a picture of
23 Mount Rushmore. I've got one president, but I need all four.
24 That's the same in this case. Those charges are the picture
25 on the cover of the big jigsaw puzzle here.

1 Count 1 in this case, Mr. Martinez showed you the
2 charge there. It's conspiracy to participate in the affairs
3 of an enterprise through certain illegal activity. The
4 enterprise of course is BGF. So again, like I said,
5 Mr. Johnson is not charged with selling drugs. He's not
6 charged with robbing anybody. He's not charged with fighting
7 with anyone. He is charged with conspiring, with agreeing to
8 be part of a conspiracy, with committing those acts to further
9 the interests of the conspiracy as opposed to his own
10 interests.

11 Now, Mr. Martinez told you about a group called YGF,
12 the Young Guerilla Family. He called it -- I forget what he
13 said, but something like the preschool or something like that.
14 There will be evidence in this case of the Young Guerilla
15 Family and Mr. Johnson was a member -- well, was part of that.
16 The Young Guerilla Family were a bunch of wannabe's. What
17 they were was young kids, kids who looked around their
18 neighborhood and saw the Black Guerilla Family and saw these
19 guys and they were the tough guys. They were the guys who had
20 the money; they were the guys who had the cars; they were the
21 guys who had the girls. That's what they wanted to be. They
22 wanted to be like those guys, so they started calling
23 themselves the Young Guerilla Family.

24 Now, the government's theory here is that at some
25 point those wannabe's merged like corporations into the

1 Black Guerilla Family. Now, there obviously aren't any --
2 like when corporations merge, obviously they -- there's piles
3 and piles of paper. There aren't papers in this case. There
4 aren't records of a merger. Where's that evidence going to
5 come from? That evidence is going to come from certain
6 witnesses. And you, ladies and gentlemen, will be the judges
7 of the reliability of those witnesses. You have to ask
8 yourself who are these people? What are they saying? Does it
9 make sense? And what do they have to gain? I think the judge
10 said it in his opening instructions, what do they have to gain
11 from the outcome of this case?

12 And you're going to see people on that stand --
13 Mr. Martinez talked about this. You're going to see men who
14 were members of the Black Guerilla Family, men who will admit
15 on the stand to committing all kinds of violent acts, dozens
16 of murders. And these are men who are in prison or facing
17 prison for long, long periods of time. And these are men who
18 are desperate to save themselves, and they have one
19 opportunity to do that, and that opportunity is to please the
20 government by saying what the government wants them to say.
21 And that's what they will say.

22 MR. MARTINEZ: Objection.

23 THE COURT: Counsel may approach.

24 (Bench conference on the record.)

25 THE COURT: Mr. Martinez.

1 MR. MARTINEZ: Your Honor, we object to that
2 specific language, that the obligation of the witnesses is to
3 please the government by saying what we want them to say.
4 That is an attack on our integrity, it's prejudicial, and it's
5 not correct.

6 MR. ENZINNA: I did not say they had the
7 obligation.

8 THE COURT: Here's the problem with it. If this was
9 closing argument, there's no problem with it. The problem is
10 that it's argumentative, too much so for opening statement.
11 So please don't argue in your opening statement. Beyond that,
12 no issue. Sustained.

13 (The following proceedings were had in open court.)

14 MR. ENZINNA: Now, ladies and gentlemen, in jury
15 selection the judge talked about the 5th Amendment and the
16 right against self-incrimination and he told you that the
17 defendants in this case have no obligation to testify. You
18 all said that that would not affect your decision in this
19 case. But Mr. Johnson will testify in this case. He will get
20 up on the stand even though he does not need to do that. And
21 he will explain to you how he lived, what he did, and what he
22 didn't do.

23 Now, with respect to Count 2, Mr. Johnson there is
24 charged with conspiring to distribute drugs. Again, the issue
25 there is conspiracy. It's not distribution of drugs. It's

1 conspiracy. Did he agree to join forces with anybody else to
2 distribute those drugs? Now, I want to talk about Counts 3
3 and 4, which are the Moses Malone murder counts. Mr. Martinez
4 talked a little bit about that. He explained to you about the
5 events that led to Mr. Malone's murder. I won't go into that
6 any further. What you will find is that there is no evidence
7 in this case that Gerald Johnson ever raised a hand against
8 Moses Malone. And I don't believe that anybody asserts that
9 he did. Instead, the government's argument is that
10 Mr. Johnson green-lighted the murder, that he authorized the
11 murder.

12 Now, again, there are no records of this. He didn't
13 fill out a form. Again, this evidence will come from
14 witnesses, and again, you'll need to ask yourselves about
15 those witnesses and about their reliability. There will be
16 lots of evidence in this case about BGF and about the
17 Black Guerilla Family. You've already seen some of it. But
18 with all due respect to Mr. Martinez, he said this case is
19 about a gang. It's not about a gang. This case is about
20 three individuals, including Gerald Johnson and we are
21 depending on you to focus on them as individuals. The judge
22 talked to you about taking notes and I encourage you to take
23 notes in this case. It's going to be a long trial. There's
24 going to be a lot of evidence. And it's important that you
25 focus on the evidence with respect to each individual.

1 Now, I'm not here to argue that Gerald Johnson is an
2 angel or a choir boy. There aren't many of those in
3 Greenmount. But he will testify about his life and tell you
4 how he lives, how he supports himself. He will tell you that
5 he has a business organizing parties. He's a party promoter.
6 He finds a location, he books entertainment, he sells tickets,
7 and he makes money from doing that. He's also a rapper. And
8 Mr. Martinez already touched on this. And he will tell you
9 that he is a rapper, that he writes rap songs, he makes rap
10 videos, he performs professionally, and he puts videos up on
11 the internet in the effort to get noticed and develop a fan
12 base.

13 You're going to see those videos in this case.
14 Those videos are a very important piece of the government's
15 case. In fact, Mr. Martinez in his opening compared them --
16 equated the videos to murders. I'm going to show you one of
17 those videos. Now, I'm not a fan of rap music. I don't know
18 if any of you are. People have different tastes. Some of
19 this music is -- frankly, I find it unpleasant. It's ugly,
20 it's violent, it can be misogynist, but the fact that I don't
21 like it or the fact that I find it obnoxious or the fact that
22 I'm upset or scared by it doesn't mean that it is not
23 legitimate, doesn't mean that it's not music, and it doesn't
24 make these videos what the government claims they are, which
25 is basically confessions by Mr. Johnson.

1 Now, we all know that artists often play a role in
2 their songs. They say things that aren't true. We all know
3 that Johnny Cash didn't shoot a man in Reno just to watch him
4 die. We all know that Bob Marley didn't shoot the sheriff.
5 And I'd like you to keep that in mind. Let me show you this
6 video and we'll talk about it a little bit after that. About
7 three minutes long. This is usually the part where I call my
8 teenage kids to show me how to do this.

9 (Video played.)

10 MR. ENZINNA: As I said, it's not a very pretty
11 picture, a lot of talk about shooting people, about guns, the
12 B-word, the N-word, the F-word. But rap artists are like any
13 other artists. They talk about the world they see, the world
14 around them, and the world Mr. Johnson lives in is a world of
15 drugs and violence and some not very pretty things. Like I
16 said, the government is going to argue that this isn't real
17 music, that these are really basically confessions by
18 Mr. Johnson. But he'll explain what he was trying to say in
19 these videos and you'll hear other evidence about that as
20 well.

21 Now, like I said, these videos and a lot of the
22 evidence in this case you're going to find strange,
23 unpleasant, disturbing, and even frightening. All we can ask
24 is that you look at all the evidence, pay careful attention to
25 all of it, keep an open mind, and ask yourself how it relates

1 to Gerald Johnson. And has -- at the end you'll be asked, has
2 the government met its burden. And it is the government's
3 burden. The judge earlier said that the opening statements
4 will tell you what each party expects to prove. That's not
5 quite correct because Mr. Johnson, as a defendant in this
6 case, is not required to prove anything.

7 It's the government's obligation to prove to you
8 beyond a reasonable doubt that he has committed each and every
9 one of the elements of the offenses with which he's charged.
10 And that's the picture on the box here, and as the pieces get
11 put together, I'd ask you to keep that in mind. Thank you
12 very much.

13 THE COURT: Thank you, Mr. Enzinna. Mr. Bussard, do
14 you wish to make an opening statement on behalf of Mr. Jones?

15 MR. BUSSARD: I do, Your Honor.

16 THE COURT: You may proceed.

17 MR. BUSSARD: Good morning, Your Honor.

18 THE COURT: Good morning, Mr. Bussard.

19 MR. BUSSARD: Good morning, ladies and gentlemen of
20 the jury. My name a Alan Bussard. I'm a solo practitioner in
21 Towson and it is my duty and honor to represent Kenneth Jones
22 today. Would you stand up Kenny. Thank you. I also want to
23 introduce another person of our team over here, Ms. Krystal
24 Panas. You were not introduced to her before. She is a
25 paralegal and she will be assisting all of the counsel

1 throughout the trial. Thank you.

2 I don't mean to be repetitious of what Judge Bedar
3 has already told you, but I feel it's important that we go
4 over a couple things together. One of those things is to
5 emphasize your patience and attention because this is only one
6 of two chances that I have to speak to you like this. And I
7 apologize in advance for speaking behind the podium. I don't
8 mean to be lecturing by any means, but it is part of the rules
9 of the Court. On the other hand, as Judge Bedar explained to
10 you, the government gets three chances.

11 So you're going to hear from them two more times.
12 You've already heard one time and you've seen the Power Point
13 presentation and you've heard a media presentation by Mr.
14 Johnson's counsel. I'm of the certain age that I touch a
15 computer as little as possible. I don't understand it. I
16 don't understand video and you will not see too many videos
17 from me. Don't hold that against Mr. Jones. Also, do not
18 believe that the government or any other party in this case
19 has an advantage over what I do. There will be times when I
20 do do those kinds of things, however, if it becomes necessary.

21 As you've already heard, there's a lot of rules and
22 regulations here. Judge Bedar went over the order of which
23 everything will be presented. There's going to be testimony
24 from the government witnesses. After they're finished
25 questioning those witnesses, we get a chance to question those

1 witnesses, then the government gets that one more chance again
2 to question those witnesses. Those are strict rules and the
3 jury's responsibility is to attend to all those rules and
4 listen to everything that is said and done in this courtroom.

5 In the end, as Judge Bredar explained to you, you're
6 going to be asked to make a very difficult decision. You're
7 going to be asked to, by the government, to convict someone of
8 the charges that were outlined earlier, beyond a reasonable
9 doubt, and to essentially take away someone's liberty. And
10 that's an important thing that we have in our criminal justice
11 system. A lot of countries do not have this system. And I
12 for one am very proud of the way our system works. It makes
13 it difficult, however, as we sit here in a United States
14 District Court.

15 We have the seal up there of the United States, we
16 have a United States district judge, we have United States
17 attorneys sitting here, we are in the U.S. courthouse. And it
18 makes it very difficult because these young men sitting over
19 here are defending themselves against the power of the federal
20 government and that is a very difficult thing.

21 The government has indicated what they believe to be
22 the evidence in this case. And it's going to be interesting
23 to see if they can keep their promise about that. It's made a
24 little bit easier by the trapings that are in this courtroom.
25 But in the end, I believe Judge Bredar's going to instruct you

1 that the fact that this case is brought in the name of the
2 United States should mean that they get no greater weight than
3 any other party to this case.

4 How did we get here? We got here because a grand
5 jury up on the 8th floor of this courthouse heard some
6 testimony and they examined some documents and they decided --
7 they took a vote and they decided that Mr. Johnson and
8 Mr. Jones and Mr. McCants may have committed an offense. And
9 they issued what's called an indictment. That's an indictment
10 right here. There's no magic to it. And in fact, when you
11 look at it very carefully it's not much different from, and I
12 hope none of you have had this experience, but if you've ever
13 gotten a traffic ticket. It is just a charging document. It
14 is a document that starts the process. And the process has
15 worked its way through since November of last year all the way
16 up till today when this trial starts.

17 It is a way of starting an orderly process. And I
18 will tell you just a little bit about the grand jury. There
19 was no judge sitting there. There was no defense attorney
20 sitting there. The defendants couldn't even be there to
21 defend themselves. The testimony that was presented was
22 solely through the United States attorneys and their
23 witnesses. There was no other people there to defend the name
24 and conduct of Mr. Johnson, Mr. Jones, and Mr. McCants. There
25 was no rulings on evidence. Judge Bredar was not there to

1 make those rulings. So what we have is a charging paper, an
2 outline of what the government believes and what the grand
3 jury believes may have occurred.

4 The evidence is going to be in several different
5 forms. There's going to be documents. There won't be many of
6 them, I don't believe. There will be, however, recorded phone
7 calls. And I want you to pay attention to the phone calls.
8 And I want you to think a little bit about it when the phone
9 calls are being played and the text messages are being
10 reviewed, about your own life. You're not going to hear the
11 20 calls that came before the one that the government plays.
12 And you're not going to hear the 20 calls that came after
13 that.

14 What you're going to hear is a snippet, a moment in
15 time, and the government's going to ask you to believe that
16 that's what is being discussed on these calls. It's context.
17 And think about it in your own personal lives as you're
18 listening to those. Would you want somebody to just snatch a
19 text message at random off of your phone and believe that
20 that's true? Because that's what's going to happen because
21 we're not going to be able to say, well, what happened the
22 week before or the month before that led up to this one text
23 message. And that's an important thing to keep in mind, is
24 context.

25 You're also going to hear from law enforcement

1 officers. Most importantly, you're going to hear from
2 cooperating witnesses. That's our term. That's what the
3 government calls it. Very early in this trial you're going to
4 hear from a person, I believe, by the name of Michael Gray.
5 And Michael Gray is going to sit in that witness box and he's
6 going to tell you without any reservation that he ordered
7 murders, that he took drugs, and that he was the leader of the
8 gang.

9 I want you to think carefully when you're looking at
10 him and listening to what he's saying because I agree if --
11 for no other reason, I agree with Mr. Martinez. You're not
12 going to like this man. You're not going to like almost every
13 cooperating witness who sits on that witness stand. These are
14 bad people. And I want you to think and look into their eyes
15 and see how cold they are because they're not going to
16 apologize for those murders. They're not going to apologize
17 for ordering the murders. They're going to just matter of
18 factly tell you this is what they did. That's -- there's an
19 important distinction because they're still living the life.
20 They may not be out on the street, they're in jail, but
21 they're living the life.

22 I want you to pay attention to when they start
23 saying "they" and "them" and "those guys." We are here in my
24 particular case for Kenneth Jones and what he did or didn't
25 do. So when you hear a witness say, is he a member of BGF,

1 how do you know that? Well, they hung around at the park.
2 They walked down the street together. They have the tattoos
3 together. That doesn't make somebody a member of something.
4 Would you like to be labeled just because of somebody you may
5 hang out with? You may hang out with some coworker and you
6 don't know what that coworker does. You may on occasion find
7 out little things, but that doesn't make you a member of their
8 group just because you have lunch with them one day or you
9 hang out in the park. The park's going to be an important
10 factor as we go along here.

11 Pay close attention to the witnesses. Some of the
12 events in this case happened over ten years ago, maybe 12
13 years ago. I think we're going to go back to 2005, maybe
14 earlier, and some of the people there made statements ten
15 years ago and they're going to sit on this witness stand and
16 they're going to rehash those same statements ten years later.
17 It may even sound exactly the same as the statement they said
18 ten years ago and that's no accident. And the reason it's no
19 accident is, and there's nothing wrong with this, the
20 government has spoken to all these witnesses.

21 They've gone over and over the testimony with them,
22 preparing them to testify here today. They may even have
23 shown them their prior testimony, their prior statements to
24 law enforcement.

25 Some of these witnesses will testify that when they

1 observed certain events ten years ago, they were under the
2 influence of drugs. I expect one government witness to say
3 that he had what is called a zombie addiction. That he woke
4 up in the morning feeling horrible, but after he took a load
5 of drugs he felt normal. And that's how he observed the day.
6 And that's the events that he observed, is what he's going to
7 testify about. The arrogance of some of these witnesses, as
8 Mr. Martinez said, you're not going to like. One of them in
9 particular I expect to say she showed up for a grand jury
10 proceeding in this courthouse, pursuant to a subpoena, under
11 the influence of marijuana. That's the respect that she had
12 for the system.

13 There will be another witness I expect that will say
14 before he spoke to the feds, meaning law enforcement, that he
15 had smoked a blunt. That he had actually -- blunt is a large
16 cigar-shaped marijuana cigarette, and then he talks to the law
17 enforcement after he's smoked his rather large marijuana
18 cigarette.

19 I want you to consider the benefits that these
20 people are getting. And benefits take the form of -- many
21 forms. As Mr. Martinez said, a lot of them have pending
22 charges and they're hoping to get a sentence reduction. Well,
23 they're hoping to get a lower sentence down the road
24 somewhere. And they're facing horrendous charges some of
25 them, but that's not the only benefit they get. Some of them

1 have already had sentence reductions. Some of them had
2 charges dismissed. Police officers came to them and the
3 police officer said, you know what, if you start working with
4 us, we just won't charge you. That's the discretion that law
5 enforcement has to offer to some of these people, and so they
6 started working. One in particular started working and then
7 kept on committing crimes. He was being paid by law
8 enforcement at the same time that he was being picked up on a
9 wiretap committing crimes.

10 Why do these people cooperate? Well, they cooperate
11 for a variety of reasons, but one, they're afraid of and I
12 already mentioned it, the United States Government. They are
13 afraid of the power that the government can bring to bear on
14 these people. They're also afraid that somebody else may come
15 in and tell them about something bad that they did. And they
16 want to be the first one in the door so that they can get it
17 off their chest and maybe not get charged. There's other
18 benefits besides the sentence reductions and the never getting
19 charged. There are sometimes the state just decides not to
20 charge people. They just -- we won't charge you as long as
21 you talk to us a little bit.

22 Well, ladies and gentlemen, some people may tell you
23 that's the way the world works. But I'm here to tell you
24 there is no free rides and you all know that. You know that
25 you don't get something for nothing. I talked a little bit

1 about the arrogance of some of the government witnesses.
2 They're going to tell you they ran the gang. They're going to
3 tell you that they earned respect, such as it is, by
4 committing acts of violence. They're going to tell you in a
5 very cold manner about the violence that they committed.

6 They will also tell you that when they take drugs,
7 as opposed to everybody else in this world, when they take
8 drugs it doesn't affect them, makes them feel normal. Also,
9 they may tell you that they can take drugs, but they can stop
10 any time they want to. You all know that's not the case. You
11 see it on TV all the time, you hear it in your daily lives of
12 people that have gotten caught up on pills. You're going to
13 hear a lot of people talk about being on opioids. You don't
14 just stop because you want to. It's too painful. You need
15 help. But a couple of these witnesses are going to say they
16 just stopped because they are the leaders. They are all
17 powerful.

18 So use your common sense a little bit when you're
19 hearing everything. I hate to keep using that word and I
20 think all three of us will be using that. Common sense is a
21 way of dealing with this. You don't need any special skills.
22 Judge Bredar has already given you an outline of how you
23 evaluate witnesses. I want to point out one thing about
24 questioning of witnesses while I'm up here. You'll notice
25 that when the government witnesses testify from this witness

1 stand starting this afternoon, it will go very smoothly
2 because they've met. Mr. Martinez, Ms. Hoffman, have met
3 these witnesses before and they know exactly what's going to
4 be said. The attorneys sitting over here for these young men
5 have never met these witnesses.

6 So when we start asking questions it gets bumpy.
7 They look at us, the witnesses look at us with this
8 incredulous look like, how dare you ask that question or I
9 don't know what you're asking, can you ask it again? They
10 stutter and they stammer and they do whatever they do. They
11 don't answer and that's because we can't talk to those
12 witnesses ahead of time. So the first time you see these
13 witnesses is the first time we see these witnesses on the
14 witness stand.

15 I want to talk a little bit about witnesses and how
16 they're protecting their turf. You all know what that means.
17 Cooperators are protecting their turf because they have a
18 vested interest in what's going on here today because they
19 want a sentence reduction or they want, in some cases, to get
20 some other benefits. One of the benefits, I expect, is going
21 to be that one of these witnesses received about \$51,000 for
22 being a paid cooperator over about a year and a half period of
23 time. That's a substantial sum of money. It's hard to make
24 \$51,000. And these are people, as you'll see on here, that
25 couldn't get a laborer's job, they couldn't work in a

1 warehouse, they couldn't work anywhere. They're not hireable,
2 but they can become a government witness and they can make
3 \$51,000 a year. That's significant.

4 You also have law enforcement officers, and by law
5 enforcement, I mean the Baltimore City Police Department.
6 Yes, that Baltimore Police Department that we see on the news
7 every night. They have done some atrocious things in this
8 case. The government's first picture on the screen was a
9 person named Moses Malone. You're going to hear that
10 indirectly his death could have been prevented by the
11 Baltimore Police Department. It wasn't. It was a lack of
12 communication between one department and another. And the
13 person who I told you received \$51,000 was right there and
14 could have stopped it all and he didn't. The cooperator was
15 inside.

16 But law enforcement had every opportunity in the
17 world, but because of the lack of communication between one
18 department and another -- and I'll tell you, they took the
19 initial steps to protect that young man, Moses Malone. They
20 put him in witness protection, but they forgot or they didn't
21 emphasize how necessary it was that he stay in witness
22 protection. And so the other department that had him in
23 witness protection didn't appreciate the danger and they
24 kicked him out and he went back on the street. In fact, they
25 dropped him off right near the same neighborhood and within

1 hours he was dead. That's on Baltimore City Police
2 Department.

3 I'm going to tell you about Kenny Jones in a little
4 bit. He's not perfect. Grew up in the Greenmount area, he's
5 a long-term resident of Baltimore. You're going to hear in
6 2011 he got convicted of possessing a firearm. The firearm,
7 the way it was recovered is, Detective Austin Sailor is
8 driving down the road and he hears or sees something that
9 doesn't sound quite right and so he turns around and he's
10 coming back and he sees Mr. Jones running down the street.
11 And he decides he better stop Mr. Jones, so he pulls up beside
12 him in the car and he goes, "Stop," and Mr. Jones stops. He
13 says, "Get down on the ground." Mr. Jones gets down on the
14 ground. Mr. Jones tells him, "Don't shoot, I'm armed." And
15 Detective Sailor does a pat down and he finds down in his shin
16 area jammed tightly in his pants is a firearm. It's tight --
17 so tight in his pants that they can't pull it out. It has to
18 be cut out.

19 And you're going to see the pictures that Detective
20 Sailor and some other law enforcement actually had to use a
21 knife to pull this gun out. It wasn't accessible to anybody
22 because it was jammed in his pants so tightly. But Mr. Jones
23 was convicted of that in 2012 and he served his time in the
24 state system.

25 Mr. Jones also has tattoos. You saw a picture of

1 him earlier. Tattoos aren't illegal, and don't let the
2 government's theory of this case that when you have these
3 tattoos, you are automatically doing something illegal.

4 In the end, as Judge Bredar already explained, the
5 government has the burden of proof in this case. Each
6 defendant, and Kenneth Jones in particular, is presumed to be
7 innocent as he sits there. And that's the presumption of
8 innocence. And at the end of this case, that presumption of
9 innocence becomes his strongest witness, because unless you're
10 convinced beyond a reasonable doubt, you're going to be
11 instructed that you must give Mr. Jones the benefit of that
12 doubt. At the end of this case, I'm going to ask you, ladies
13 and gentlemen, to return a verdict of not guilty for
14 Mr. Jones. Thank you.

15 THE COURT: Thank you, Mr. Bussard. Mr. Francomano,
16 on behalf of Mr. McCants, do you wish to make an opening
17 statement?

18 MR. FRANCOMANO: I do, Your Honor.

19 THE COURT: You may proceed.

20 MR. FRANCOMANO: Thank you.

21 The government's right, this case is about the Black
22 Guerilla Family. But it's not about Marquise McCants. My
23 name is John Francomano, and I represent Marquise McCants.
24 Mr. McCants, please stand. In this opening statement and in
25 this trial, I'm only going to talk about one person: Marquise

1 McCants. There will be a lot of evidence that you're going to
2 hear in this case that has nothing to do with him. And
3 sometimes I may cross-examine a witness and ask them, did
4 Mr. McCants have anything to do with this case, and that will
5 probably be my only question. What I want you to do is listen
6 to the witnesses in this case. Listen and see if the evidence
7 is about Mr. McCants, see if it's about another person, and
8 that's the job that you've not been hired to do, but that's
9 the job why you're here.

10 And one of the most important rights that a
11 defendant has is a presumption of innocence. My co-counsel
12 spoke about that, His Honor spoke about that. At this moment
13 Mr. McCants is innocent of all crimes. Mr. McCants is
14 innocent until proven guilty by the government. The entire
15 burden of proof is on the government's shoulders. They have
16 to prove everything. They go first and present their case and
17 then Mr. McCants will be able to present his case if he
18 chooses to. He does not have to put on a case. The
19 government has to prove beyond a reasonable doubt that
20 Mr. McCants is guilty. He doesn't have to disprove it.

21 Now, this opening statement I'm doing is comprised
22 of three parts. Good news is the first part's done. The
23 second part I want to talk a little bit about Mr. McCants,
24 talk about some of the evidence, the witnesses, and then
25 finally, I'd like to give you some concluding remarks.

1 Now, Mr. McCants is 25 years old. He has two
2 children that are six and 10 years old. He grew up in a tough
3 neighborhood in Baltimore City. He -- his father wasn't there
4 for him, he didn't really know his father, and his mother
5 unfortunately was a drug addict, family had very little or no
6 money. He was actually raised by his grandmother and his
7 three brothers and his sister. Didn't have much supervision,
8 if any, supervision growing up. And it was better for him to
9 be out of the house than to be in the house. So he spent most
10 of his time on the streets of Baltimore hanging out with his
11 friends and the friends that he hung out with got in trouble.
12 Now, in his neighborhood if you didn't stand up for yourself
13 you got beaten up. You got terrorized.

14 So that's the world that he lived in. So when he
15 was hanging out with these individuals, as I said, they would
16 get into trouble. Now, Mr. McCants got in trouble too. He
17 was convicted of a crime and he went to jail. In this case
18 you're going to hear a lot about the BGF. You will hear its
19 structure; you're going to hear about its goals; you're going
20 to hear about who the members are; you're going to hear about
21 how they committed crimes. But remember, this case is not
22 about the BGF. This case, for my purposes, is about
23 Marquise McCants.

24 Everything the government just told you is not
25 evidence. It's their theory of the case. Evidence comes from

1 witnesses who testify, comes from exhibits that are put into
2 evidence. The government is going to bring in 68 pieces of
3 physical evidence; from handguns to drugs to sneakers. Not
4 one of those handguns is going to have Mr. McCants's
5 fingerprints or DNA on it. Not one piece of the drugs, the
6 bags of the drugs, the paraphernalia, are going to have
7 Mr. McCants's fingerprints or DNA on it. Not one piece of
8 physical evidence will have Mr. McCants's DNA or fingerprints
9 on it.

10 Government's making a big deal about tattoos; who
11 has them, what they are, linking them to the
12 Black Guerilla Family. As Mr. Bussard said, having a tattoo
13 is not a crime. People have tattoos, and you know, their
14 generation, I think everybody has tattoos nowadays. The
15 government spoke to you about the shooting of Mr. Bess back on
16 February 4th, 2017. What you didn't hear from the government
17 is that you will not hear from one eyewitness on North Avenue
18 that night. There will be no evidence that the phone actually
19 belonged to Mr. McCants, that was tracked. A search warrant
20 was executed the day after the shooting in which no gun was
21 found. Four days later another search warrant was executed in
22 which a gun was found inside of a wall. You will never
23 hear -- or not hear that Mr. McCants was ever tested for any
24 gunshot residue.

25 Now, the witness's going to bring in -- excuse me,

1 the government's going to bring in a number of witnesses who
2 have criminal records or gang members who may have reasons to
3 lie. You will hear from James Cornish. He's one of the
4 witnesses who received \$6,800 from the government. You're
5 going to hear from Christopher Meadows, and he received
6 \$26,000 from the government.

7 Finally, you're going to hear from Harry Caesar, and
8 he received \$51,000 from the government. You're going to hear
9 from witnesses who received lighter sentences. You're going
10 to hear from witnesses that their cases were never prosecuted.
11 You're going to hear from witness who, for lack of a better
12 term, their cases were dismissed.

13 Credibility is going to be a huge issue in this
14 case. The most important part of your job is to judge who is
15 telling the truth. That's the job. Does a witness have a
16 reason to lie? What's their motivation for testifying? Were
17 they even there when something happened? Will they get the
18 benefit for testifying? How do they act on the stand? Do
19 they have a criminal record? You'll have to weigh all these
20 factors in determining if they're telling the truth.

21 Now, you will have to judge the allegations in this
22 case separately. You're going to hear about a lot of violence
23 and you're going to hear a lot of things that are disturbing.
24 And you're going to want to say, you know what, they're all
25 guilty. This bad stuff that happened, they're all guilty.

1 You can't do that. You have to judge each piece of evidence
2 for what it is or what it isn't. Just because the government
3 filed these charges against Mr. McCants it does not mean that
4 he is guilty. The government has to prove Mr. McCants is
5 guilty beyond a reasonable doubt.

6 Ladies and gentlemen of the jury, all I ask is that
7 you listen to all the evidence, don't make any judgments now.
8 Listen to all the evidence, keep your mind clear, and once
9 you've heard everything, I believe you'll find Mr. McCants not
10 guilty. Thank you.

11 THE COURT: Thank you, Mr. Francomano. Ladies and
12 gentlemen, we're going to take our lunch break. During this
13 break do not discuss the case with anyone. Do not discuss it
14 even among yourselves. You must wait until after you've heard
15 the evidence, the closing arguments, and my instructions as to
16 the law. Do not allow yourselves to be exposed to any news
17 articles or reports that touch upon this case or the issues it
18 presents or any articles or reports that relate to any of the
19 participants in the case. Avoid all contacts with any of the
20 participants in the trial. Do not make any independent
21 investigation of the law or the facts of the case. Do not
22 look up anything related to the case or its participants on
23 the internet. Do not consult an encyclopedia or a dictionary.
24 Ladies and gentlemen, we'll be on lunch break for basically an
25 hour and 22 minutes, so please return at 1:45. Please take

1 the jury out.

2 (Jury left the courtroom.)

3 THE COURT: Be seated, please. Who's the first
4 witness going to be for the government?

5 MR. MARTINEZ: We're calling Mr. Gray, Your Honor.

6 THE COURT: Okay. How long do you think he'll be on
7 the stand?

8 MR. MARTINEZ: His direct will last, I would say,
9 between one and two hours, 90 minutes is my best ballpark.

10 THE COURT: Very good. All right. Let's attempt to
11 deal with the issue Mr. Bussard raised that I postponed when
12 it was first presented earlier this morning. So I take it
13 from reading the papers that this pertains to two different
14 firearms that the government believed they had in their
15 possession or had access to and in relation to which they wish
16 to present certain evidence during their case in chief. Am I
17 correct that evidence relating to these same firearms was
18 previously presented in a trial against one or more of the
19 defendants in state court?

20 MS. HOFFMAN: That's correct, Your Honor.

21 Mr. Jones, as I think Your Honor knows, was charged with the
22 murder of Gregory Rochester and the attempted murder of
23 Lamontae Smith in state court. He was convicted of those
24 crimes in state court, and during that trial there was
25 evidence presented as to those firearms and the ballistic

1 testing that was done.

2 THE COURT: Okay. And Mr. Bussard, you agree with
3 that statement so far?

4 MR. BUSSARD: So far.

5 THE COURT: Now, it's also my understanding that the
6 government believed they were in a position to turn over the
7 actual physical firearms to counsel for the defendant, or more
8 likely, his investigators and experts, for forensic testing
9 and examination and the sort of thing that good defense
10 counsel always do when they are confronted with physical
11 evidence that has kind of a scientific quality to it. Is that
12 fair, Ms. Hoffman?

13 MS. HOFFMAN: That's correct, Your Honor. We -- I
14 think it's important to note, however, that the defendant at
15 no point and his counsel at no point requested to actually
16 submit the firearms for testing by a different expert and no
17 expert -- no such expert was disclosed to us. I also, in
18 conferring with the agent this morning, learned and I think
19 this may resolve the question as to the firearm that was used
20 to shoot Lamontae Smith. We do still have the test-fired
21 casings for that gun. And so if the defendant does indeed at
22 this late hour wish to have a different expert test the
23 evidence, we still have the evidence that's required for the
24 actual comparison to be made.

25 THE COURT: All right. So first of all, this is

1 casings, not ballistics.

2 MS. HOFFMAN: This is test-fired casings and
3 projectiles from the gun --

4 THE COURT: It is ballistics.

5 MS. HOFFMAN: I'm sorry.

6 THE COURT: It's both.

7 MS. HOFFMAN: Yes, both.

8 THE COURT: Both the bullet and the casing.

9 MS. HOFFMAN: Yes.

10 THE COURT: Okay. So did you recover bullets, the
11 projectiles themselves, from the crime scene?

12 MS. HOFFMAN: From the crime scene there were
13 five .45 caliber casings recovered. And I don't believe there
14 were projectiles recovered.

15 THE COURT: Okay.

16 MS. HOFFMAN: So it's the casings that matter in any
17 case.

18 THE COURT: So the projectiles that you recovered
19 from the testing have no evidentiary significance because they
20 weren't compared to anything.

21 MS. HOFFMAN: Right, it's the test -- casings.

22 THE COURT: It's a casings case, it's not a
23 ballistics case.

24 MS. HOFFMAN: As to that shooting, yes.

25 THE COURT: Okay. So you have an expert who's going

1 to say that they came into possession of the firearm. I take
2 it that you'll be able to prove the chain of custody up to the
3 point where the expert got the gun.

4 MS. HOFFMAN: Yes.

5 THE COURT: At least you believe you'll be able to.
6 And then the expert will say that he or she fired the weapon
7 and then recovered the casings and then made a comparison
8 between those casings that they generated in their test firing
9 to the casings that were collected from the crime scene.

10 MS. HOFFMAN: Exactly. And my understanding is that
11 that's the only way a comparison can be done. So the casings
12 aren't compared to the firearm itself. The firearm is first
13 test fired and the casings from the scene are compared to the
14 test-fired casings.

15 THE COURT: Right. And then is it your
16 representation that the expert's going to come to court and
17 testify that within a reasonable degree of forensic certainty
18 the test previously endorsed by the Court in pretrial motions,
19 he or she will offer the opinion that the casings came from
20 the same gun?

21 MS. HOFFMAN: Yes, precisely.

22 THE COURT: Okay. And this gun was recovered where?

23 MS. HOFFMAN: The gun was recovered from
24 4447 Pall Mall Avenue. It was recovered after the recorded
25 jail calls made by the defendant were listened to by agents in

1 which he used coded language to instruct someone to dispose of
2 the firearm. And that person was apprehended and law
3 enforcement talked to that person and he was able to direct
4 them to where the firearm was.

5 THE COURT: All right. And then is there an issue
6 with respect to a second gun?

7 MS. HOFFMAN: Yes. The second gun was a stolen
8 firearm and it was returned to its rightful owner. So that
9 evidence was not destroyed, it still exists, and we're hopeful
10 that we'll be able to get our hands on the gun. It's also --
11 the agent is still searching as of this minute to see whether
12 we have the test-fired casings and projectiles for that gun.
13 He's optimistic that we do, but I don't have an answer yet 100
14 percent.

15 THE COURT: And that gun relates to what?

16 MS. HOFFMAN: The murder of Gregory Rochester.

17 THE COURT: What does the first gun relate to?

18 MS. HOFFMAN: The attempted murder of
19 Lamontae Smith.

20 THE COURT: Okay. But otherwise, you hope to be in
21 the same situation with respect to the second firearm that you
22 believe you are in with respect to the first.

23 MS. HOFFMAN: Yes, exactly.

24 THE COURT: Okay. So you would agree that by the
25 unavailability of the firearms, defense counsel is not in a

1 position to have his expert test fire the weapons and make
2 comparisons between the shell casings and -- from a test and
3 the shell casings arrive from -- recovered from the two crime
4 scenes; right?

5 MS. HOFFMAN: Well, with respect to the gun that was
6 returned to the rightful owner, assuming that we can figure
7 out who that person is and get a subpoena for the gun, then
8 there is a chance that the defendant would be able to test
9 fire the gun himself, or through his expert. With respect to
10 the other gun though, yes, the defendant would have to use the
11 test-fired casings that are already in existence.

12 THE COURT: That's because that gun has been
13 destroyed.

14 MS. HOFFMAN: That's correct.

15 THE COURT: You have a record to that effect.

16 MS. HOFFMAN: That's correct.

17 THE COURT: Okay. Thank you, Ms. Hoffman. Okay.
18 Mr. Bussard.

19 MR. BUSSARD: Your Honor, first of all, they have
20 not been examined yet. There is in our submitted budget a
21 ballistics expert set aside for that.

22 THE COURT: Well, ballistics is the science of
23 examining projectiles for marks that are left by the
24 experience of the projectile after the detonation of an
25 explosive traveling down the barrel of a firearm and certain

1 marks are left on the projectile from that experience. As I
2 understand it, there isn't any ballistics evidence that's
3 going to be offered with respect to either of these two
4 weapons. Is the government ready to reaffirm that?

5 MS. HOFFMAN: Well, I believe we were talking about
6 the Lamontae Smith gun when Your Honor asked about ballistics.

7 THE COURT: Okay.

8 MS. HOFFMAN: As to the Gregory Rochester murder,
9 there are both casings and projectiles that were compared and
10 matched.

11 THE COURT: So possibly you want to offer ballistics
12 evidence with respect to the second of the firearms.

13 MS. HOFFMAN: Yes. Although chronologically, it's
14 the first of the firearms. But I did want to just push back a
15 little bit on what Mr. Bussard has said. We have been
16 repeatedly requesting for months now that the defendants let
17 us know whether they intend to call any expert and we have not
18 received any notice from the defendant, Mr. Jones, that he
19 intends to call a ballistic expert until we informed him that
20 unfortunately these guns, unbeknownst to us, are not in our
21 possession anymore.

22 THE COURT: Well, are you suggesting that somehow
23 they've waive the opportunity to challenge the evidence even
24 though it turns out you don't have it? I don't think that's
25 very firm ground. Go ahead, Mr. Bussard.

1 MR. BUSSARD: Thank you, Your Honor. As with a lot
2 of other physical evidence, we would like to have the experts
3 have a chance to examine the firearms and then report to us
4 whether in fact the reports that have been provided to us by
5 the government experts are in fact consistent with our expert.
6 If that's the case, then we would have disclosed those
7 experts, but we never had the opportunity to do so.

8 THE COURT: Why aren't you in a good enough position
9 by virtue of the fact that you have all of the test data,
10 evidently, from the test firings and your expert right now can
11 sit down and put those shell casings under the microscope and
12 look and see whether or not they agree or disagree? I mean,
13 isn't that where the fight would be regardless of whether the
14 guns were present or not, whether or not those shell casings
15 in fact match? And if the fight is someplace else, then it's
16 no different than the position you otherwise would have been
17 in. You know, you want to challenge the credibility of the
18 government's experts. You're still able -- or their test
19 results. You can still do it and say, look, these marks don't
20 line up and our expert shows how they don't line up.

21 MR. BUSSARD: And we will be doing that, Your Honor.
22 I expect to do that.

23 MR. MARTINEZ: Then we request a disclosure.

24 THE COURT: Hold on. Talking to Mr. Bussard. Go
25 ahead.

1 MR. BUSSARD: One of the issues was that these guns
2 were not the type of gun that was recovered from Mr. Jones.
3 They were recovered from third parties. And the Court -- one
4 of its first questions was a chain of custody issue and the
5 chain of custody is going to become a major fight down the
6 road here.

7 THE COURT: Why does the gun have to be present now
8 in order for you to fight that out?

9 MR. BUSSARD: The gun -- two reasons. If I saw the
10 gun and I was able to see at least one of the firearms and I
11 had a discussion with Special Agent Hayden about it during the
12 physical exam, I'd like to look at --

13 THE COURT: Before these guns disappeared?

14 MR. BUSSARD: No, no, it was another one of the
15 guns.

16 THE COURT: Oh, a different gun, not one of these
17 two guns.

18 MR. BUSSARD: And I'm always looking for traits of
19 the firearms, including smooth surfaces to -- you know, to
20 have the line of questioning about fingerprints, to see if
21 there was fingerprint dust left on these, had they been
22 cleaned up, had they been maintained in a fashion that maybe
23 they were decaying in some way or rusting. I think the jury's
24 entitled to see something in the same condition as it was the
25 day it was recovered and some of these guns were recovered

1 four years ago.

2 THE COURT: Aren't you in a perfectly fine position
3 to argue with respect to those issues when the agent -- when
4 you ask the agent on the stand, well, okay, you made all this
5 analyses of the gun, where's the gun? Well, I don't have the
6 gun anymore. What did you do with the gun? I destroyed it.
7 Or in the second case, I gave it back to the rightful owner.
8 So you don't have the gun here in court, so there's no way for
9 us to now check that gun and see whether or not there are
10 fingerprints left on the gun, is there?

11 MR. BUSSARD: That would be the line of questioning.

12 THE COURT: Right. I mean --

13 MR. BUSSARD: It's what I don't know.

14 THE COURT: How are you prejudiced? Is it that --

15 MR. BUSSARD: It's the unknown. It's not seeing the
16 gun and having somebody who is familiar with firearms, I'm
17 not, have somebody look at those firearms, just tell me
18 anything they can tell me about that gun that may be helpful
19 in examining the government's expert. But without the gun
20 it's just generalized talk about which model it is and ask
21 them this, ask them that regarding a generalized model, not
22 that model. For all I know, there's a ding in the barrel.
23 There's something that would cause the -- whatever findings to
24 change.

25 THE COURT: Okay. But that doesn't -- none of that

1 undercuts the accuracy of the expert testimony about the shell
2 casing comparisons such that the government's expert shouldn't
3 be permitted to testify. It goes to another question and that
4 is whether or not the evidence is available for you to look
5 for other facts and circumstances that might have been helpful
6 to your side; right?

7 MR. BUSSARD: Yes, sir, and clearly it's not
8 available.

9 THE COURT: Right. But before I can find some kind
10 of *Brady* violation or something along those lines, I've got to
11 have a reason to believe there might have been something that
12 was helpful or exculpatory about the gun, beyond the
13 speculation that there might have been a flat surface that had
14 a fingerprint on it that could have been lifted but now can't
15 be and could have been shown that someone else possessed it
16 other than your client. That's the best I can come up with so
17 far and that's all speculation.

18 MR. BUSSARD: Without seeing the weapon it is
19 speculation.

20 MS. HOFFMAN: Your Honor, I just wanted to make a
21 couple points.

22 THE COURT: But I haven't called on you yet. So
23 Mr. Bussard, is that the full extent of it?

24 MR. BUSSARD: I think it is, Your Honor. I realize
25 that it's non-testimonial evidence, but it's still a

1 confrontational issue. I think if everybody is talking about
2 this firearm, the best I'm going to be left with is
3 cross-examining somebody and saying, do we have the firearm
4 here today, which may turn out to be a better line of
5 questioning based on my opening statement about the --

6 THE COURT: Might end up better for you -- that
7 might end up better for you that there's no gun there.

8 MR. BUSSARD: Your Honor, I felt like I had to make
9 the record for Mr. Jones's sake and especially in light of the
10 late announcement by the government that these items were not
11 available.

12 THE COURT: Right. When did you first request to
13 see these two firearms?

14 MR. BUSSARD: These specific firearms, probably a
15 discussion at the evidence review on November 15th. We were
16 requesting a show and tell, so to speak, a couple times,
17 verbally. All of us, I think, were asking and that was the
18 most convenient time to do it. I just noticed at that --
19 there was an array around this circular table, big circular
20 table, and you work your way down based on CC numbers and what
21 have you, overt act numbers. And when I got to the part about
22 this, I noticed that those firearms were not in the
23 presentation.

24 THE COURT: All right. Well, I don't find that the
25 actual physical presence of the two firearms is necessary

1 foundation to the evidence that the government evidently
2 intends to offer with respect to the casings comparison
3 analysis on both guns and the ballistics analysis on what
4 we'll now refer to as the first gun, so that we have our time
5 sequence right, the alleged murder weapon. Because the
6 question will be whether or not the data survives and whether
7 the data is available for reanalysis by a defense expert. And
8 from what I've been told so far, it absolutely does continue
9 to exist and is available for that sort of reanalysis and
10 comparison by the defense expert.

11 I don't find that there's any prejudice to the
12 defendant in potentially admitting the comparison evidence of
13 the sort described by virtue of the fact that the gun isn't
14 here anymore. That doesn't mean though that if defense
15 counsel wants to get into cross-examination of the expert or
16 anyone else relating to that gun, about where the gun is now,
17 and thinks that they have some sort of pathway to relevant
18 information by virtue of its not being present, then I won't
19 permit it. I expect that I probably would permit it. But the
20 motion in limine to exclude the expert testimony, which is
21 essentially what you're seeking to block; right? The expert
22 testimony with reference to the shell casing comparisons and
23 the projectile comparisons as to one of the guns is denied.

24 All right. Anything else we need to address before
25 we recess for lunch?

1 MR. O'TOOLE: Very quickly.

2 THE COURT: Mr. O'Toole.

3 MR. O'TOOLE: Thank you, sir. Very quickly, before
4 the cross-examination of Mr. Gray, I just want to ask a
5 question. We can do it now or after the lunch break, but I
6 see in the previous testimony of his and I expect it today
7 too, there will be some showing him documents that are not
8 exhibits and showing him documents for his recollection.

9 THE COURT: Yes.

10 MR. O'TOOLE: Do you want those done on the ELMO or
11 do you want me to hand those to him?

12 THE COURT: Don't put anything up. This is a flat
13 policy: Don't put anything up on the screen that is not in
14 evidence or not clearly coming into evidence by mutual
15 understanding.

16 MR. O'TOOLE: So it can't be cut off, it can't be
17 cut off for the jury for your purposes and his.

18 THE COURT: We probably have that capability in
19 here, but I don't have it.

20 MR. O'TOOLE: Perfect.

21 THE COURT: So if you're going to refresh a
22 witness's recollection, do it in the old way. And you also
23 don't have to ask for permission to approach the witness, but
24 don't linger at the witness box either. Go up there with the
25 document, give it to him, and then go back to wherever you

1 were conducting the examination from. Then when you're
2 finished refreshing the recollection, you can either recover
3 it or ask the clerk to recover the document and we move on.
4 Important thing is, don't put content on the screen that's not
5 in evidence.

6 Other thing is, don't have the guy -- don't have the
7 witness read the content into the record. You know, that's a
8 rule for both sides. You know, we have to be somewhat
9 formalistic with respect to refreshing recollection, which is
10 look at the document, once you have refreshed your memory, put
11 the document down, and look up. And that's what you should
12 say to the witness and that will signal them to answer the
13 question the appropriate way as opposed to what every other
14 witness wants to do, which is to start reading from the
15 document.

16 MR. O'TOOLE: Thank you.

17 THE COURT: Anything else before we take the bunch
18 lunch break? Mr. Martinez.

19 MR. MARTINEZ: I wanted to come back to the subject
20 of the 4:30 proceedings this afternoon.

21 THE COURT: We are going to stop at 4:30 today.

22 MR. MARTINEZ: 3 o'clock tomorrow; is that right?

23 THE COURT: I can't remember. Pull up the calendar.
24 Oh, we're moving that.

25 MR. MARTINEZ: Okay.

1 THE COURT: No 3:00 o'clock tomorrow. Okay. So
2 back at 1:45. We're in recess. The defendants are remanded
3 until then.

4 (A recess was taken.)

5 THE COURT: Be seated, please. Counsel, obviously
6 Mr. Gray is in custody. Many other witnesses who testify
7 during the course of this trial will be in custody.
8 Presumably they will be appearing in jail clothes. It will be
9 apparent just from that that they're in custody. They'll be
10 seated on the witness stand with a deputy Marshal in close
11 proximity to him. That will also indicate that they're in
12 custody.

13 Does any counsel object to the fact that the jury is
14 going to see the witnesses who are in custody brought in
15 through the secure entrance, a final sort of indicia of their
16 being in custody? Mr. Enzinna.

17 MR. ENZINNA: No objection, Your Honor.

18 THE COURT: Mr. Bussard.

19 MR. BUSSARD: No objection.

20 THE COURT: Mr. Francomano.

21 MR. FRANCOMANO: No objection, Your Honor.

22 THE COURT: Okay. Are we ready for the jury,
23 Counsel?

24 MR. MARTINEZ: We are.

25 THE COURT: Let's bring them.

1 (Jury entered the courtroom.)

2 THE COURT: Good afternoon, ladies and gentlemen.

3 The Government may call their first witness.

4 MR. MARTINEZ: Your Honor, at this time, the
5 Government calls Michael Gray.

6 THE COURT: Michael Gray. Mr. Gray, please stand
7 there and face our clerk right over here.

8 THE CLERK: And sir, if you would please raise your
9 right hand to be placed under oath.

10 TIMOTHY MICHAEL GRAY,
11 called as a witness, being first duly sworn, was examined and
12 testified as follows:

13 THE WITNESS: Yes.

14 THE CLERK: Thank you, sir, you may have a seat.

15 And sir, if you would please pull the microphone
16 down, speak directly into the microphone. State your first
17 and last name, and spell your first and last name.

18 THE WITNESS: Timothy Gray, T-i-m-o-t-h-y,
19 G-r-a-y.

20 THE CLERK: Thank you, sir.

21 THE COURT: Mr. Martinez.

22 DIRECT EXAMINATION

23 BY MR. MARTINEZ:

24 Q Mr. Gray, good afternoon, sir.

25 A Good afternoon.

1 THE COURT: Mr. Gray, if you would move your chair
2 further, close to the microphone, it will pick you up better.
3 Thank you.

4 Go ahead.

5 Q (BY MR. MARTINEZ) Could you tell us how old you are,
6 sir?

7 A 49.

8 Q Where are you from?

9 A Baltimore.

10 Q I'm sorry. Could you speak up?

11 A Baltimore.

12 Q Do you go by any nicknames?

13 A Mike Gray, MG, Uncle Mike.

14 Q What is -- the nickname Uncle Mike, could you explain
15 that for us?

16 A Older member of the BGF.

17 Q All right. So are you a member of the BGF?

18 A Was.

19 Q What does the BGF stand for?

20 A Black Guerilla Family.

21 Q And when you say you were a member of the BGF, what do
22 you mean?

23 A Because I can't be no more.

24 Q Why is it you can't be a member of BGF anymore?

25 A Because I testified.

1 Q All right. When did you become a member of the
2 Black Guerilla Family, Mr. Gray?

3 A In '95.

4 Q And where were you at the time when you became a member
5 of BGF?

6 A Maryland House of Correction.

7 Q Is that facility, the Maryland House of Corrections,
8 referred to by any other name or nicknames?

9 A The Cut.

10 Q Was BGF already in existence when you became a member?

11 A Yes.

12 Q Do you know how BGF got started?

13 A Yeah, San Quentin by George Jackson.

14 Q Where is San Quentin?

15 A California.

16 Q I'm showing you Government's Exhibit PHI 93, do you
17 recognize this individual?

18 A Yes, George Jackson.

19 Q He's the person who started BGF?

20 A Yes.

21 Q Could you tell the ladies and gentlemen of the jury how
22 BGF came to Maryland?

23 A We had a brother, Uncle Ray, that was locked up in
24 California.

25 MR. O'TOOLE: Objection, Your Honor. Can we

1 approach the bench, please?

2 THE COURT: You can approach.

3 (Bench conference on the record.)

4 THE COURT: The question was, how did BGF come to
5 Maryland. The answer was, we had a brother, Uncle Ray.

6 MR. O'TOOLE: I think it's -- my objection is just
7 the whole line -- it's the line of questioning, I think, Your
8 Honor. We have no idea. He's not an expert witness. He
9 hasn't told us how he knows any of this.

10 Mr. Martinez is going to put him on just to tell a
11 history story. We have no basis of knowledge, we have no
12 foundation, and I object because I think he needs to lay some
13 sort of foundation to let him answer these types of
14 questions.

15 THE COURT: Well, I'll sustain the objection on
16 foundational grounds. And Mr. Martinez, please lay some
17 additional foundation for the basis of Mr. Gray's knowledge.
18 But if the testimony is presented as it was in the previous
19 trial, I have no doubt that there's an adequate foundation
20 that exists for his knowing something about the organization
21 of the Black Guerilla Family in Maryland. But the point is
22 well taken, and the basis for his having that knowledge does
23 need to be constructed first. Sustained.

24 (The following proceedings were had in open court.)

25 THE COURT: Sustained. You may inquire.

1 MR. MARTINEZ: May I continue, Your Honor?

2 THE COURT: You may.

3 Q (BY MR. MARTINEZ) Mr. Gray, I want to back up a few
4 questions to where you told us that you had been, but are no
5 longer, a member of BGF. Remember that?

6 A Yeah.

7 Q Could you tell the ladies and gentlemen of the jury how
8 long you were in BGF?

9 A From '95 to 2015.

10 Q Were you one of the original BGF members in Maryland?

11 A Yes.

12 Q Were you a bushman?

13 A Yes.

14 Q What is a bushman?

15 A Over -- when -- one of the people that runs the BGF.

16 Q Okay. And in addition to being a bushman, one of the
17 people who runs BGF, did there come a time where you rose to
18 become the city-wide commander of the gang?

19 A Yes.

20 Q And in fact, were you the city-wide commander of the gang
21 until you were charged under federal law in this Court?

22 MR. O'TOOLE: Objection. It's leading, Your
23 Honor.

24 THE COURT: Overruled, but let me see counsel at the
25 bench.

1 (Bench conference on the record.)

2 THE COURT: I would have sustained another
3 objection, that is, as to foundation, i.e. what is BGF? What
4 is BGF? We have no proof of it.

5 You can step back.

6 (The following proceedings were had in open court.)

7 Q (BY MR. MARTINEZ) Mr. Gray, we're going to back this up
8 even further and I'm going to ask you tell the ladies and
9 gentlemen of the jury, first of all, what is BGF?

10 A Black Guerilla Family.

11 Q All right. Is the Black Guerilla Family a gang?

12 A It didn't start out as a gang. It was a political
13 organization.

14 Q Did there come a time where it became a gang?

15 A Yes.

16 Q All right. And so you were explaining that you joined
17 the gang; right?

18 A Yes.

19 Q All right. And before the most recent bench conference,
20 I think you had explained that you were formerly the city-wide
21 commander; correct?

22 A Yes.

23 Q Over your 12 years in -- or over your time in BGF, did
24 you become familiar with the gang structure?

25 A Yes.

1 Q How about its rules?

2 A Yes.

3 Q How about its oath?

4 A Yes.

5 Q How about the way it's set up in different neighborhoods
6 in Baltimore City?

7 A Yes.

8 Q All right. How about its history?

9 A Yes.

10 Q All right. Now I want to go back to where we were before
11 and I had asked you how BGF came to Maryland.

12 A Yes.

13 Q Could you pick up with your answer to that question?

14 A Oh, Uncle Ray was locked up in California and then he --

15 MR. O'TOOLE: I'm sorry, Your Honor. I couldn't
16 understand.

17 THE COURT: Speak a little more slowly. Go ahead.

18 THE WITNESS: We had a brother, Uncle Ray. He was
19 locked up in California. He came to -- he came back to
20 Maryland with permission to start the gang.

21 MR. O'TOOLE: Objection. Same objection.

22 THE COURT: Overruled. Next question.

23 Q (BY MR. MARTINEZ) And so what, if anything, did Ray do
24 to start the gang in Maryland?

25 A It was -- we started out -- it was seven of us that

1 started out. We used to hang out together, and then he showed
2 us the rules, the regulations, the oaths, asked us did we
3 agree with it. We agreed with it and then we just started
4 recruiting from there.

5 Q And what was it -- once BGF was up and running in the
6 Maryland House of Corrections, what, if anything, did it do to
7 establish its presence in the jail?

8 A Extort, rob. I mean, we did whatever we had to do.

9 Q All right. So give us an example of extortion in the
10 jail that BGF committed while you were in the House of
11 Corrections.

12 A If you was getting drugs or cigarettes or whatever, I'd
13 push up on you. I'd come to you and tell you; look, this is
14 what we want, this is what we need, we need ten percent. And
15 we'd go from there.

16 Q Have you ever heard the phrase "either ride with us or
17 collide with us"?

18 A Yeah, I used to say it.

19 Q What does it mean?

20 A It was, do what we say or we deal with you.

21 Q So in addition to extorting, did BGF also smuggle things
22 into the jails?

23 A Yeah.

24 Q What kinds of things would BGF smuggle into the jails?

25 A Drugs, tobacco, phones.

1 Q How would BGF get those things into the jails?

2 A Different ways. Visiting room, officers.

3 Q When you first joined BGF in the Maryland House of
4 Corrections, did you have a particular role?

5 A Not when we first started.

6 Q Did you eventually come to have a role in the gang?

7 A Yeah.

8 Q What was it?

9 A First I was the MOD, the minister of defense.

10 Q Okay. And we'll come to that position and what it does
11 in a moment. I want to direct your attention to 2015 and ask
12 you, did there come a time in 2015 when you were charged with
13 a racketeering conspiracy offense in this Court?

14 A Yes.

15 Q Did you plead guilty to that charge?

16 A Yes.

17 Q At the time you were charged, what was your rank or
18 status within BGF?

19 A Hodari.

20 Q What's the hodari?

21 A The street commander.

22 Q And at that time, Mr. Gray, was there a higher ranking
23 BGF member on the streets of Baltimore than you?

24 A No.

25 Q As part of your guilty plea in that prior case, did you

1 agree to cooperate with the government?

2 A Yes.

3 Q Does your cooperation agreement with the government
4 require you to testify fully and truthfully in this case?

5 A Yes.

6 Q Have you testified in any other cases pursuant to your
7 cooperation agreement?

8 A Yes.

9 Q If you do everything that's asked of you under your
10 cooperation agreement, what are you hoping to get?

11 A Leniency from the judge on my sentencing day.

12 Q Has anyone made any promises or guarantees about what
13 kind of sentence you can expect?

14 A Nobody can promise me nothing. It's up to the judge.

15 Q Does your eligibility for a sentencing reduction, or
16 leniency as you say, depend in any way on what happens in this
17 case, whether there's a conviction in this case?

18 A No.

19 Q Under the terms of your cooperation agreement, what would
20 happen if we found out you didn't testify truthfully today?

21 A Then they take the cooperation agreement away.

22 Q What would happen if we found out you exaggerated?

23 A Take the cooperation agreement away.

24 Q All right. Let's come back to BGF. Does BGF have an
25 oath?

1 A Yes.

2 Q Could you recite the oath for us?

3 A Should I ever be untrue and forsake the chosen few, this
4 oath should kill me. Should I ever become lax of discipline
5 in times of strife and neglect my brother, this oath should
6 kill me. If I ever sought to do harm or allow harm to come to
7 my brother, this oath should kill me. If ever at any time I
8 refuse or deny to give assistance to this oath or reject my
9 brother, this oath should kill me. If ever I reveal the sworn
10 secrecies of this oath, this oath should kill me.

11 Q Let me show you what's been marked as
12 Government's Exhibit GP 1. Do you recognize this?

13 A Yes.

14 Q What is it?

15 A The oath.

16 Q Does the oath have any different names, is it referred to
17 in any other way?

18 A Yeah, the O, the Oatmeal.

19 Q How about the first letters of each of these?

20 A Two S's and three I's.

21 Q Two S's and three I's? Now, this oath says at various
22 points, at the end of every phrase, in fact: this oath shall
23 kill me. Can you explain for the ladies and gentlemen of the
24 jury what that means?

25 A Self-explanatory.

1 Q Well, could you go ahead and explain it?

2 A It means it should kill you. If you violate any one of
3 the rules, it's going to kill you. You could die.

4 Q And if someone violated the rules and was killed, by whom
5 would they be killed? Who would kill them if they violated
6 the rules?

7 A Whoever is assigned to kill you.

8 Q Are there other BGF oaths?

9 A Yeah, you got the bush oath.

10 Q Have you ever heard of the fox oath?

11 A Yeah, I heard of it.

12 Q What's a fox?

13 A A sympathizer.

14 Q And do they take a separate oath?

15 A Of late, yeah.

16 Q Okay. Are foxes full-fledged members?

17 A No.

18 Q What's the difference between a fox and a full-fledged
19 member?

20 A A fox is just a sympathizer. A full-fledged member, you
21 got the regular oath.

22 Q What does a fox have to do to become a member of BGF?

23 A I guess -- I really don't know, because I know
24 sympathizers are just people that sympathize with our cause.

25 MR. O'TOOLE: Objection, Your Honor. He says he

1 doesn't know.

2 THE COURT: Overruled.

3 Q (BY MR. MARTINEZ) You can continue.

4 A A sympathizer is somebody that just sympathize with our
5 cause. A fox is something that people just made up.

6 Q I understand. How about a prospective member, if
7 somebody is wishing to become a member of BGF, what do they
8 have to do to join the gang?

9 A It used to be that, you know, I might see somebody that I
10 think is a prospective member, we'll watch him and see is he
11 worthy to become a full-fledged member.

12 Q What kinds of things are you watching for?

13 A Mentality, how you carry yourself. If he wanted to go --
14 if he was willing to put in work.

15 Q What does it mean to put in work?

16 A I mean, they might be -- might get sent to rob, might get
17 sent to extort somebody, might get sent to, you know, just do
18 the gang business.

19 MR. O'TOOLE: I'm sorry, Judge.

20 THE COURT: Could you --

21 Q (BY MR. MARTINEZ) Did you say "do the gang's business,"
22 Mr. Gray?

23 A Yeah.

24 Q So do I understand you to be saying that robbing and
25 extorting are part of the gang's business?

1 A Yes.

2 Q Okay. You mentioned that there is a separate oath for
3 bushman; is that right?

4 A Yes.

5 Q All right. And you mentioned that the bushman are the
6 people -- earlier you said the bushman are people who make
7 decisions in BGF; is that right?

8 A Yes.

9 Q What does one -- what does a BGF member have to do to
10 become a bushman?

11 A Be a member for -- in good standing for a while, put in
12 work. That's basically it.

13 Q Can put in work include killing?

14 A It can.

15 Q Do bushmen have their own oath?

16 A Yes.

17 Q Do you know that oath?

18 A Yes.

19 Q Could you recite it for us, please?

20 A There's a whole -- it's basically a song and dance that
21 we go through before we get there, and it's the regular oath
22 backwards. Then you -- where do you sleep? In the bush. How
23 do you enter? Under the ground beneath the sea, using the
24 dragon tooth as the key. Who made thee a ruler and the judge?
25 The same dear God sent to be the ruler and delivered by the

1 hands of the angel which appears in the bush. And then the
2 regular oath backwards, the three I's, then the two S's.

3 Q Okay. Does BGF have a written set of rules, Mr. Gray?

4 A Yes.

5 Q What are they called?

6 A The 22s.

7 Q How about a constitution, are there BGF constitutions as
8 well?

9 A Yes.

10 Q What are those called?

11 A 33s.

12 Q And the 22s and 33s together --

13 A 55s.

14 Q All right. I want to show you -- actually, first, where
15 do those rules come from?

16 A California.

17 Q Do you know who came up with the rules?

18 A Doc Holiday.

19 Q And who is Doc Holiday?

20 A One of the original members of BGF from San Quentin
21 Prison in California.

22 Q Okay. Now I want to show you Government's Exhibit GP 4.
23 I'll try and zoom in so you can see this.

24 MR. O'TOOLE: Your Honor, is this in evidence -- is
25 this exhibit in evidence or not?

1 THE COURT: It's been referred to and there was no
2 objection.

3 MR. O'TOOLE: It was referred to as in evidence
4 or --

5 THE COURT: Counsel, you can approach.

6 (Bench conference on the record.)

7 THE COURT: Excuse me, I've got a scratchy throat.
8 Local rule in the District of Maryland, the first time an
9 exhibit is referred to -- first time an exhibit is referred to
10 in open court it is deemed admitted unless an objection is
11 immediately interposed, with the only qualification being that
12 if counsel sponsoring the exhibit refers to it as having been
13 marked for identification, then it is understood not to be
14 offered in evidence and no one need object in order to ensure
15 that it's not admitted.

16 MR. O'TOOLE: Do you want to write this out?

17 THE COURT: Ending where I started, the first time
18 an exhibit is referred to in open court, it's deemed admitted
19 unless an objection is interposed immediately. It's a rule
20 that's been in place in the District of Maryland ever since I
21 came here in 1992. Any confusion about that?

22 MR. O'TOOLE: Then we'd be required to object to
23 every exhibit that's mentioned --

24 THE COURT: You've got to move closer to the mike.

25 MR. O'TOOLE: Then we'd be required to object to

1 every exhibit that's mentioned because there's no foundation
2 with that yet.

3 THE COURT: If that's the position you want to take,
4 we can start down that route. Generally what happens is that
5 counsel meet in advance of a criminal trial and sort those
6 issues out, and to the extent that there are real problems in
7 that regard, we address them through the motions in limine
8 process. But --

9 MS. HOFFMAN: We circulated our exhibit list last
10 week and you have our exhibit binder now.

11 MR. MARTINEZ: This particular item has been in
12 discovery for a long time. We're going to introduce it
13 through Detective Hayden later anyway. He's the one who
14 recovered it. And so to the extent there are issues about
15 where it came from or its authenticity, I'm happy to mark it
16 now for identification only. The point is he's going to be
17 able to recognize it as the 22 rules of the gang.

18 MR. O'TOOLE: I understand that, Your Honor. The
19 reason I'm up here now is we're early in this trial --

20 THE COURT: Yes.

21 MR. O'TOOLE: -- and I want to make sure we don't
22 step on something you want to be done differently. It's my
23 position that you say don't put anything on the screen unless
24 it's -- if it's in evidence. This is not something I thought
25 was in evidence, so I wanted to know what's going on. So

1 that's why I'm up here. I'm not up here to cause a problem.

2 THE COURT: The moment it shows up on the screen,
3 the moment it is first referred to is taken by the Court as
4 its being offered in evidence. If an objection is interposed
5 immediately, then we'll hear the objection. But if no
6 objection is made, it's deemed in, it's deemed admitted.

7 It's a rule that started originally by former
8 Chief Judge J. Frederick Motz in the 1980s, I understand. But
9 I think it's unique, but nonetheless well-established in this
10 district, so I intend to adhere to it.

11 And Counsel, I guess if you haven't dealt with this
12 before, you're going to need to do some thinking about how
13 you're going to manage it. Perhaps you want to take some time
14 to look at the government's witness list and identify those
15 exhibits with respect to which you feel you have objections
16 and then take those up with the Government.

17 MR. O'TOOLE: When do you think that might happen?
18 We're in the middle of probably the first and most important
19 witness.

20 THE COURT: Well, Mr. O'Toole, I operate under the
21 assumption that counsel have read our local rules.

22 MR. O'TOOLE: Well, you know, I thought I had. I'm
23 just telling the Court I did not -- I'm not aware of this rule
24 and I take full responsibility for that. But the Court is now
25 suggesting that we do something, which obviously we can't do

1 on the fly right this second. So the other option is to
2 either object to every single thing you see, which seems
3 ridiculous to me because then it just gets all -- I just
4 wanted to make sure. It caused me to come up here because the
5 Court said don't put something on that's not in evidence and I
6 didn't think this was in evidence. That's why we're up here.
7 Now, if I'm wrong about that, and I apparently am, then we'll
8 deal with it.

9 THE COURT: Well, you are. Step back.

10 (The following proceedings were had in open court.)

11 THE COURT: Pull it off the screen.

12 Mr. O'Toole.

13 MR. O'TOOLE: Sir?

14 THE COURT: You objected.

15 MR. O'TOOLE: It's withdrawn.

16 THE COURT: You may proceed.

17 Q (BY MR. MARTINEZ) Mr. Gray, I'm putting up
18 Government's Exhibit GP 4 back on the screen. Do you
19 recognize this document, do you know what's in this
20 document?

21 A Yes.

22 Q What is it?

23 A 22 laws, 22 rules.

24 Q I want to go through some of these with you. Actually,
25 first, let's talk about Jamaa. What is Jamaa, what does it

1 mean?

2 A It's Swahili for family.

3 Q Does BGF use other Swahili terms?

4 A Yes.

5 Q Why does BGF use Swahili terms?

6 A Disguise different things when we first started.

7 Q Is Jamaa also a shorthand term for BGF?

8 A No, it just mean family.

9 Q What about J?

10 A Short for Jamaa.

11 Q Okay. And if somebody said to you "he's J," what would
12 that mean to you?

13 A He's BGF.

14 Q Or "he's in J," what would that mean?

15 A He's in BGF.

16 Q Okay. Let's go through some of these rules. Could you
17 read us Rule No. 1?

18 A Never place your hands on your brother.

19 Q How about No. 2, never speak in vain of Jamaa?

20 A Never talk bad about Jamaa.

21 Q What's Rule No. 3?

22 A Never talk bad about your brother.

23 Q How about Rule No. 4?

24 A Never argue in public with your brother.

25 Q And No. 5?

1 A Any verbal dispute shall cease when emotions come into
2 play with your comrade.

3 Q What's a comrade?

4 A A brother, another member of BGF.

5 Q I'm going to zoom in on 6 a little bit more. It's right
6 here, would you mind reading that for us?

7 A We never take matters into our own hands unless it's
8 spontaneous action that warrants immediate action, but we
9 always go back to protocol.

10 Q What's protocol?

11 A A set of rules. Protocol is the way that you do things.
12 Our order, the order in which you do things.

13 Q Okay. Is that the same or different than chain of
14 command?

15 A Chain of command, protocol.

16 Q So BGF has a chain of command?

17 A Yeah.

18 Q How about Rule No. 7?

19 A Never speak Jamaa business in public.

20 Q Why is it important not to talk about Jamaa business in
21 public?

22 A Because it ain't no -- it ain't the public business.

23 Q Rule No. 8?

24 A If a meeting is called --

25 Q Would it help if I handed you a copy of the document so

1 you could look at the original?

2 A Yeah.

3 MR. MARTINEZ: May I approach, Your Honor?

4 THE COURT: Yes.

5 Q (BY MR. MARTINEZ) Can you read that now?

6 A If a meeting is called, unless everyone must be there --
7 everybody must be at the meeting when they call it or it will
8 result in actions being taken by the MOJ.

9 Q Who's the MOJ?

10 A The minister of justice.

11 Q What does he do?

12 A He distribute justice, keeps order, hands out
13 sanctions.

14 Q He hands out sanctions?

15 A Yes.

16 Q We'll get to that in a moment. I want to draw your
17 attention to 19 here. What's that rule?

18 A We never move on a situation unless it's approved and
19 strategized by the MOD.

20 Q What's the MOD?

21 A Minister of defense.

22 Q What does he do?

23 A Plan, plot, and strategize. Anything that need to be
24 done, always moving on something.

25 Q What does it mean to move on something?

1 A If you got a heist, if you got a -- if somebody violated,
2 MOD set it up.

3 Q Okay.

4 A A plan of action. He make a plan of action.

5 Q How about Rule No. 20? It's the third from the bottom.

6 A All channels of planting a seed must be closely followed.

7 Q Does that say to avoid conflict, does that look right to
8 you?

9 A Yeah.

10 Q I just wanted to ask you what a seed is.

11 A Potential member.

12 Q So planting a seed is a potential member?

13 A Yeah.

14 Q I think earlier, Mr. Gray, you also mentioned that BGF,
15 in addition to 22 rules, has 33 constitutions; is that right?

16 A Yes.

17 Q Are you familiar with the 33 constitutions?

18 A Yes.

19 Q I'm going to show you Government's Exhibit 43. Sorry.

20 Do you recognize what's in this document, Mr. Gray?

21 A Yes.

22 Q What do you recognize it to be?

23 A Part of the constitution.

24 Q All right. Let's go through some of them. See at the
25 top it says the only way to become a member of Eusi Gyedi

1 Jamaa is by sponsor or directive or to be specified by the C.

2 Do you see that?

3 A Yes.

4 Q Can you explain what that rule means?

5 A The only way you can become a member of Jamaa, of BGF, is
6 to have a sponsor, somebody that's already a member of the
7 BGF.

8 Q What does Eusi Gyedi Jamaa mean?

9 A It's basically the family.

10 Q What language is it?

11 A Swahili.

12 Q So Jamaa, you testified earlier, is family.

13 A Yes.

14 Q How about Eusi Gyedi Jamaa?

15 A I forgot what it is.

16 Q See the reference in this rule to a C, what does that
17 person do?

18 A Huh?

19 Q Right here, it says the only way to become a member is by
20 a sponsor or directive specified by C. Who is the C?

21 A Commander.

22 Q All right. What does he do?

23 A Overrun the regime.

24 Q All right. Going back to Eusi Gyedi Jamaa, Mr. Gray, let
25 me ask it this way: What is Swahili for Black Guerilla

1 Family?

2 A Usually it's Gyedi Jamaa.

3 Q Okay. Thank you. Let's look at Rule No. 2 or
4 Constitution No. 2, can you read that rule?

5 A Once you pledge, you use this organization --

6 Q Right here, once you pledge you take this organization to
7 your grave. Under this particular constitution, is it
8 possible to get out of BGF once you're a member?

9 A No.

10 Q How about No. 5, discipline comes in three forms, fines
11 and beatdowns for major offenses, and death for extreme
12 violations. Can you give us an example of an extreme
13 violation that would result in a sanction of death?

14 A Me testifying.

15 Q So is snitching an extreme violation?

16 A Yes.

17 Q And are you violating the BGF oath by snitching?

18 A Yes.

19 Q Are you violating the 33s?

20 A Yes.

21 Q Who can order a sanction of death?

22 A The bush.

23 Q Anybody else?

24 A (No verbal response.)

25 Q Could the C in a regime order a sanction of death?

1 A No.

2 Q Have you ever ordered a sanction of death?

3 A Yes.

4 Q How about No. 7, all allegations have proof -- must have
5 proof attached to it -- right here -- that will not exist
6 amongst Jamaa, and the author of the allegations will be
7 thoroughly disciplined, what does that rule mean?

8 A It means that if you say somebody did something, you got
9 to have proof, black and white, like it got to be in black and
10 white.

11 Q All right. So let's take the example of somebody who's
12 accused of being a snitch or talking to the police. How would
13 this rule requiring proof in black and white apply in that
14 context?

15 A They got to be in the paperwork. Their name going to
16 show up in the paperwork.

17 Q I'm going to go down to No. 11 here. I'm sorry, I'm just
18 holding it so that it -- if a member is selected to carry out
19 a directive, he/she will be given a proper interview to carry
20 out the said directive, and if he/she refuses or fails to
21 carry out the said directive, then he/she becomes the target.
22 What does that rule mean?

23 A If you asked to do something and you don't do it, then
24 you become the target, and so we'll get somebody else to do
25 it.

1 Q And what kinds of directives or things that people might
2 be asked to do is this rule referring to?

3 A It could be anything from giving somebody a beatdown and
4 you don't want to give your friend a beatdown and you don't
5 want to beat them down, then you'll get a beatdown. It could
6 be killing somebody. If you don't do it, you become the
7 target.

8 Q Okay. So under this rule, if you're asked to kill
9 somebody and you refuse to do it or you fail to do it, what
10 happens to you --

11 A You become the target.

12 Q How about No. 12, right here, we do not participate in
13 snitching or working against -- working with the police
14 against -- and it's hard to read the last word. What does
15 that rule mean?

16 A Means we don't -- Jamaa don't participate in snitching or
17 working with the police.

18 Q How about Rule 19, here towards the bottom, we do not
19 allow harm to come to a comrade without confrontation?

20 A Confirmation.

21 Q Confirmation, I'm sorry. And you explained earlier that
22 a comrade is a member of BGF; right?

23 A Yes.

24 Q So under this rule, if a BGF member is robbed, what is
25 his fellow comrade required to do?

1 A Rob with him.

2 Q If a BGF member is shot, what is his fellow comrade
3 required to do?

4 A Ride with them, if they don't come from the BGF.

5 Q I'll turn the page over. Let's skip down to 27 here,
6 never reveal the secrets of the dragon. What's the dragon,
7 Mr. Gray?

8 A Jamaa.

9 Q Why is the dragon Jamaa, is it a symbol for the gang?

10 A Yes.

11 Q Okay. And why are members required not to reveal the
12 secrets of the dragon?

13 A Because it's supposed to be sacred.

14 Q Why is it supposed to be a secret?

15 A I said it's supposed to be sacred.

16 Q Oh, okay. How about the next rule, all acts of loyalty
17 are subject to reward, while all acts of treason are subject
18 to discipline, can you give us an example of an act of treason
19 that might be subject to discipline?

20 A Me testifying.

21 Q Any other examples?

22 A You're breaking another rule.

23 Q You break a rule of the gang?

24 A Yeah.

25 Q All right. Last thing on this page, see here where it

1 says silver shield, and then shield, sword, and AK-47?

2 A Yeah.

3 Q Are those items, the shield, the sword, and the AK-47,
4 how are those associated with BGF? Do they have any meaning
5 in the context of BGF?

6 A Yeah, it was a tattoo, but -- the gun and the sword, but
7 it was more to it than the shield.

8 Q So are you saying a tattoo with a gun and a sword on it
9 is a tattoo of BGF?

10 A Yeah.

11 Q Okay. Let me show you Government's Exhibit PT 10, is
12 that the kind of tattoo you were talking about?

13 A Yeah.

14 Q And do you recognize that to be a BGF tattoo?

15 A Yeah.

16 Q So if you saw somebody -- if you were locked up in the
17 jail and somebody came in with that tattoo, what would you
18 think?

19 A That they were J.

20 Q And somebody being J means what?

21 A That they Jamaa, they BGF.

22 THE COURT: Let me see counsel.

23 (Bench conference on the record.)

24 How do you show that marked, as PH or as PT?

25 THE CLERK: I was just --

1 THE COURT: Same problem.

2 Okay. So there's confusion between the clerk and
3 me -- among the clerk and me about how your exhibits are
4 marked. I heard you refer to that as PT.

5 MR. MARTINEZ: PHT, I'm sorry.

6 THE COURT: So it should be PHT. What are those
7 letters?

8 MR. MARTINEZ: Photos of tattoos, photographs of
9 tattoos.

10 THE COURT: Okay. That's what that stands for.
11 Okay. So the earlier initials that you were indicating, I
12 think there was G?

13 MR. MARTINEZ: GP.

14 MS. HOFFMAN: That's from -- I think you have to
15 correct -- on the record. The originals are different.

16 MR. MARTINEZ: Okay.

17 THE COURT: Ms. Powell, let me see the exhibit list
18 that you're operating off of.

19 THE CLERK: I was looking for PHT. I do not see
20 that.

21 MS. HOFFMAN: Some of the tattoos, we weren't able
22 to photograph until Tuesday.

23 THE CLERK: Here they are --

24 MR. MARTINEZ: So we need to add the one, PHT 10.

25 THE COURT: Okay. And you've got them organized in

1 a way that is logical, which is that anything beginning with P
2 comes before anything beginning with Q, R, S, or T?

3 MS. HOFFMAN: Well, within each category they're
4 numbered, so --

5 THE COURT: So the P exhibits come before the S
6 exhibits and T exhibits?

7 MS. HOFFMAN: In the exhibit list, yes, but not
8 necessarily in the order in which they'll come in.

9 THE COURT: It doesn't matter the order in which
10 they come in. I don't care about that. I just care about
11 whether the list is organized in a logical --

12 MS. HOFFMAN: Yeah, it's alphabetical.

13 THE COURT: -- sequence. It's alphabetical all the
14 way through, so the PHs come before the PTs.

15 MS. HOFFMAN: Yes.

16 THE COURT: Okay. I'm going to hold you to that.

17 (The following proceedings were had in open court.)

18 THE COURT: Reference again to the exhibit and then
19 you may continue, Mr. Martinez.

20 MR. MARTINEZ: The one that was just on the screen,
21 the tattoo?

22 THE COURT: Yes. That is?

23 MR. MARTINEZ: That's Government's Exhibit PHT 10.

24 THE COURT: You were referring to PHT 10.

25 MR. MARTINEZ: Correct.

1 THE COURT: Thank you. Next question.

2 Q (BY MR. MARTINEZ) Mr. Gray, I want to come back to the
3 story you were telling about your time in BGF. You said
4 earlier that you joined BGF in '95 while you were serving a
5 sentence in prison; is that correct?

6 A Yes.

7 Q What crime were you serving a sentence for?

8 A Attempted murder.

9 Q How long was that sentence?

10 A 12 years.

11 Q 12 years, you said?

12 A Yes.

13 Q During that 12-year sentence did there come a time where
14 you escaped from prison?

15 A Yes.

16 Q Could you explain for the ladies and gentlemen of the
17 jury how you escaped?

18 A It was -- the jail tried to walk me from one jail to
19 another to play basketball and I ran. I left.

20 Q You just walked away?

21 A Yes.

22 Q Okay. What jail were you in at the time?

23 A The Maryland Penitentiary.

24 Q Was there a reason why you decided you wanted to
25 escape?

1 A Yeah, my mother was sick and dying.

2 Q So what year was this?

3 A 2005.

4 Q All right. And so when you escaped in 2005, by that
5 point in time had BGF established a presence on the streets of
6 Baltimore in addition to in the jails?

7 A Yes.

8 Q At that time how was BGF organized on the streets of
9 Baltimore?

10 A We had one regime.

11 Q And what's a regime?

12 A Regime is like a unit.

13 Q It's a unit. So there was one unit for BGF for the whole
14 city in 2005; is that correct?

15 A Yes.

16 Q Did that change --

17 A Yes.

18 Q -- or did that stay the same?

19 A Yes, it changed.

20 Q How did it change?

21 A Me and my friend Will, we was riding around and started
22 establishing regimes in different neighborhoods.

23 Q Was Will in BGF?

24 A Yes.

25 Q What was Will's rank in the gang?

1 A Bushman.

2 Q I'll show you Government's Exhibit PHI 87. Do you
3 recognize that person?

4 A Yes.

5 Q Who's that?

6 A Will.

7 Q So Will was a bushman, were you also a bushman at this
8 time?

9 A Yes.

10 Q All right. So you said you and Will were riding around
11 different neighborhoods in Baltimore setting up regimes.

12 A Yes.

13 Q Can you remember where the first regime was?

14 A On Kennedy. The first regime was over east Baltimore,
15 Kennedy, then the second one was up Park Heights on Shirley.

16 Q And why was it that you wanted to organize regimes by
17 neighborhood, what was the thought behind that, Mr. Gray?

18 A Because it was easier than just doing it the way that we
19 was doing it with one regime because dudes trusted each other
20 in their neighborhoods before they would trust somebody
21 outside their neighborhood.

22 Q So as you went from neighborhood to neighborhood with
23 Will and you guys were setting up regimes in different places
24 throughout the city, could you explain what -- what did it
25 look like to get a regime up and running, how would you

1 organize these regimes?

2 A We would find somebody that was locked up with us that we
3 knew was already J, and he knew who was in his neighborhood.
4 He knew how many people that were J in his neighborhood and
5 then we'd build from there.

6 Q So once you got started setting up these regimes, you
7 mentioned you did one in Kennedy and another in Park Heights.
8 Did there come a time where you went back to prison?

9 A Yes.

10 Q Why did you go back to prison?

11 A I turned myself in.

12 Q Why did you decide to turn yourself back in?

13 A Because my mother asked me to.

14 Q What year was this?

15 A 2005.

16 Q Okay.

17 A The end of 2005, yeah.

18 Q So you weren't out very long after you had escaped.

19 A Huh-uh.

20 Q And when you went back to jail and you turned yourself
21 back in, how long did you stay there then?

22 A Like two years.

23 Q Okay. So you were released again in 2007; is that
24 right?

25 A Yeah, I got paroled.

1 Q Okay. And when you got paroled in 2007, what happened to
2 the process you had begun with Will where you were riding
3 around the city and organizing regimes in different places?

4 A We continued.

5 Q Okay. Before we come back to that process, first let me
6 ask you, are you familiar with the term bubble?

7 A Yes.

8 Q What's a bubble?

9 A It's the positions inside a regime.

10 Q Okay. So each regime includes a bubble; is that
11 correct?

12 A Yes.

13 Q And what are some of those positions in the bubble?

14 A Field marshal, field general, MO -- the minister of
15 defense, minister of justice, minister of education, minister
16 of finance, commander, lieutenant commander.

17 Q Let me show you Government's Exhibit DEM 2. Does this
18 fairly depict what you were just describing in terms of the
19 positions within the bubble in a regime, see it in here?

20 A Yes.

21 Q All right. So you already told us with respect to the
22 commander, the commander is the C; is that right?

23 A Yes.

24 Q And what's his role in the regime?

25 A Oversee the whole regime --

1 Q How about the --

2 A -- and be the go-between between the regime and the
3 bush.

4 Q I'm sorry, I cut you off.

5 A He oversee the regime, but he the go-between between the
6 regime and the bush.

7 Q So the bush is above the regime?

8 A Yes.

9 Q And the commander reports to the bush; is that right?

10 A Yes.

11 Q How about the lieutenant commander, the LTC?

12 A He basically handle the day-to-day operations of the
13 regime.

14 Q And the minister of justice, you explained earlier that
15 that person --

16 A He dish out the justice, he give out the sanctions.

17 Q What are sanctions given out for?

18 A Breaking the rules.

19 Q And what kind of sanctions are there for rules broken?

20 A Anything from a fine to death.

21 Q How about the minister of finance, what does he do?

22 A Control the money.

23 Q And how does BGF make money?

24 A Hustling.

25 Q What do you mean by hustling?

1 A Sell drugs, you rob. You know what I mean? Whatever,
2 whatever you do.

3 Q How about extortion, does BGF engage in that, too?

4 A Yes.

5 Q Does BGF collect dues, are there dues in BGF?

6 A Yes.

7 Q And how often are those supposed to be collected?

8 A Once a week.

9 Q And who's in charge of maintaining the dues or the
10 treasury with BGF?

11 A Finance.

12 Q Okay. Minister of defense, we talked about that person
13 earlier. You said he strategizes; is that correct?

14 A Yes.

15 Q So if the regime -- what kind of situation might the
16 minister of defense have to strategize about for the regime?

17 A If we was beefing with somebody, if you had a problem
18 with somebody, he would tell you how to go about taking care
19 of it. If we was going to rob somebody, he would set it up,
20 how we going to do it.

21 Q How about if the gang was going to kill someone, or the
22 regime, rather?

23 A Yeah, if need -- yeah, if he on a need-to-know basis.

24 Q How about the minister of education, what does he do?

25 A Teach the history of Jamaa, make sure everybody know

1 their 22s, 33s, and know the history.

2 Q How about the oath?

3 A Yeah.

4 Q So are all BGF members expected to know their 22s and
5 33s?

6 A And their oath.

7 Q Let's move on to the sergeant of arms. What does he
8 do?

9 A Make sure that we have guns, knives, whatever. He the
10 sergeant of arms.

11 Q And then last, the field marshal and the field general,
12 how about them?

13 A They deal with the -- they really the ones that really
14 deal with the day-to-day operation, find out what the dudes in
15 the field going through. I mean, they report to them.

16 Q So they are the liaison between the bubble and the field,
17 is that what you're saying?

18 A Yes.

19 Q What does it mean to be in the field?

20 A Meaning that you don't have a position, but you're J.
21 You're not in the bubble.

22 Q Basically everybody else who's not in the bubble; is that
23 right?

24 A Yeah.

25 Q So the regimes that you and Will were setting up

1 throughout Baltimore City, did they incorporate this
2 structure, a bubble and then a regime beneath it?

3 A Yeah.

4 Q Did there come a time when you and Will set up a BGF
5 regime in the Greenmount Avenue corridor?

6 A Yes, Will did.

7 Q I'm sorry?

8 A Yes, Will did.

9 Q When was that?

10 A About 2006. 2005, 2006.

11 Q All right. I want to ask you about that, but before I
12 do, I want to ask you whether you've ever heard of an
13 organization called YGF.

14 A Yes.

15 Q What was YGF?

16 A Young Guerilla Family.

17 Q And can you tell us whether YGF operated in a particular
18 neighborhood of Baltimore?

19 MR. O'TOOLE: Objection, Your Honor.

20 THE COURT: You may approach.

21 (Bench conference on the record.)

22 THE COURT: Okay.

23 MR. O'TOOLE: It's the same objection we had in the
24 beginning. He doesn't say what it is. He says what is YGF,
25 he says -- he says what it stands for, and then he just goes

1 into --

2 MR. MARTINEZ: I asked him if he was familiar with
3 the organization.

4 MR. O'TOOLE: And he just says -- he didn't say what
5 it is. He just said it's YGF, YGF is Young Guerilla Family.
6 It's assuming -- we've been very lenient and not objected to
7 anything because I think he's leading the witness and I
8 understand. But I think at some point the witness ought to be
9 able to at least tell us what he's talking about.

10 THE COURT: Well, I haven't heard any leading on
11 what I consider to be truly substantive matters. There has
12 been some leading to try to link concepts to keep the
13 testimony flowing with a witness who is inarticulate, to say
14 the least. This particular question was, whether you can tell
15 us whether YGF operated in a particular part of Baltimore.
16 What's your objection there?

17 MR. O'TOOLE: Objection is he asks about YGF, and
18 then he says yes, then he says what was YGF, Young Guerilla
19 Family. He doesn't say what it is, doesn't say it's an
20 organization, doesn't say that it's -- whatever it is. It's
21 the same thing on the point that I made to you about BGF.

22 THE COURT: Yeah, but now that we've had BGF
23 explained to us, it's a much smaller leap to what YGF is --

24 MR. O'TOOLE: It's a leap nonetheless, I think.

25 THE COURT: I don't think so. Overruled.

1 (The following proceedings were had in open court.)

2 THE COURT: Overruled. You may continue --

3 Q (BY MR. MARTINEZ) Mr. Gray, I was asking you whether you
4 can tell the ladies and gentlemen of the jury whether YGF
5 operated in a particular neighborhood in Baltimore.

6 A Yes, 22nd and Barclay.

7 Q When did you first learn about YGF?

8 A While I was out there in 2006.

9 Q And from whom did you hear about YGF?

10 A Will.

11 Q What did Will tell you about YGF?

12 A Basically, that they was just doing stuff -- no. The
13 first place I heard about it was on the news, but then Will
14 told me more about them, who they was.

15 Q All right. Well, let's take that step by step. What did
16 you hear on the news?

17 A That it was a bunch of murders happening in a certain --
18 in that neighborhood and that's when Will told me who was
19 doing it.

20 Q So you heard there were a bunch of neighbors in that
21 neighborhood, you're referring to the Greenmount, 22nd and
22 Barclay --

23 A Yeah, around that area.

24 Q -- that neighborhood?

25 A Yeah.

1 Q All right. So do I understand you then to be saying that
2 you followed up with Will and you asked him about it?

3 A Yeah, because he said -- because I asked him was it us.

4 Q And what did Will say?

5 A He said no.

6 Q When you said was it us, what did you mean?

7 A BGF.

8 Q And when Will said no, did he then explain?

9 A Yeah --

10 Q What did Will say?

11 A -- yeah. He told me that it was little dudes that call
12 themselves YGF.

13 Q Uh-huh. And what, if anything, did Will tell you about
14 what YGF had been up to?

15 A They was just doing -- they was involved in all the
16 shootings.

17 Q Okay. And what, if anything, did you tell Will about the
18 situation, were you concerned?

19 A Yes, because Will was talking about starting a regime
20 around there in that neighborhood, and I think he had already
21 told me that he had started a regime in the neighborhood or
22 was getting ready to start a regime in the neighborhood. And
23 I was telling him -- I told him if they ain't -- let the
24 little dudes know that they need to become J.

25 Q And why was it that you wanted the little dudes from YGF

1 to become J?

2 A Because we was getting the blame for the stuff that they
3 was doing.

4 Q Okay. What does it mean for a neighborhood to become
5 hot?

6 A Meaning that the police are going to constantly be around
7 there and can't nobody get no money.

8 Q So were you concerned that Greenmount was becoming hot
9 because of YGF?

10 A Yes.

11 Q During these discussions did Will tell you -- well, you
12 said you told Will to tell YGF to shut it down or become J; is
13 that right?

14 A Yes.

15 Q And did Will do that?

16 A Yeah, and then he came back and told me that they were
17 bucking, said some of them was bucking. I told him that --
18 find out whoever -- whichever one was bucking, make an example
19 out of them.

20 Q Well, let me ask you what it means -- what do you mean
21 when you say bucking?

22 A Meaning that they wasn't going to be J, that they be
23 saying that they wasn't going to be J.

24 Q Okay. So they were YGF members who didn't want to become
25 BGF?

1 A Yeah.

2 Q That's what you mean by bucking, and that you told Will
3 to make an example out of the strongest one?

4 A Yes.

5 Q And how did you envision making an example out of that
6 particular individual?

7 A Kill them.

8 Q Okay. As you're having these conversations with Will,
9 did he ever tell you who he was talking to in YGF when he was
10 communicating with them?

11 A Yeah.

12 Q Who?

13 A Geezy.

14 Q Do you see Geezy in the courtroom today?

15 A Yes.

16 Q Could you point him out? And why don't you pick out an
17 article of clothing he's wearing just so the record is clear.

18 A Blue polo shirt.

19 MR. O'TOOLE: No objection.

20 THE COURT: Record will reflect that the witness has
21 identified the Defendant Johnson.

22 You may continue.

23 Q (BY MR. MARTINEZ) Did Will explain to you whether at the
24 time he was having these discussions with Geezy, Geezy had a
25 particular role in YGF?

1 A No. He ain't never even go into detail. He just say
2 that he could handle them.

3 Q He could what?

4 A He could handle them.

5 Q Handle who?

6 A YGF.

7 Q Okay. So Will told you that Geezy said he could handle
8 YGF?

9 A Yes.

10 Q Okay. What do you mean by that, Mr. Gray?

11 A Meaning that he could get done what I needed to get
12 done.

13 Q And what was it that you wanted to be done?

14 A Them to become J.

15 Q Okay. Now, you mentioned that you told Will to make an
16 example out of the toughest or strongest person who wouldn't
17 come over; is that right?

18 A Yes.

19 Q And you said that Will said he would do it?

20 A Yes.

21 Q Did you learn anything further about that instruction
22 that you gave to Will, what became of that instruction?

23 A Will said somebody end up -- one of them end up getting
24 killed, somebody around there got killed. Will said that it
25 was done.

1 Q So there was a murder?

2 A Yeah.

3 Q And where did the murder happen?

4 A On 22nd and Barclay, on Barclay.

5 Q And Will told you what about that murder?

6 A He just said it was done.

7 Q Okay. And he was referring back to the instruction you
8 gave, take care --

9 A Yeah.

10 Q -- of the strongest person?

11 A Yeah.

12 Q All right. So you told us earlier that you got out of
13 jail on parole in '07; is that right?

14 A Yes.

15 Q Now, after you got out of jail, did there ever come a
16 time where you went to the Greenmount neighborhood to talk to
17 people in the neighborhood about YGF?

18 A Yes.

19 Q When was that, how soon after you got out of jail?

20 A I was down Greenmount and Barclay first time that I
21 talked to anybody about it.

22 Q Okay. Who did you speak with when you went to -- or the
23 Barclay area to talk about YGF?

24 A First time, I talked to Stimey.

25 Q Did there ever come a time where you went to talk to

1 Geezy about YGF?

2 A Yes.

3 Q Okay. Where did you talk to Geezy, can you remember?

4 A On Greenmount and Barclay -- no, first time I talked to
5 Geezy was up -- about that was up on 22nd and Barclay.

6 Q Okay. Let me show you Government's Exhibit GM 30, do you
7 recognize that location?

8 A Yes.

9 Q What do you recognize it to be?

10 A Where I talked to Geezy.

11 Q Was anybody else there for this conversation?

12 A Yeah, Will.

13 Q All right. Now, when you and Will and Geezy were in this
14 location having this conversation, what did you talk about?

15 A About them shutting it down and about the situation about
16 the dude getting killed.

17 Q Okay.

18 A About the little dudes -- I asked them to shut it down
19 and I said little dudes running the neighborhood. Only
20 thing -- like I said, only thing Geezy said was they don't run
21 the neighborhood, then I talked to Will and told him to handle
22 it.

23 Q All right. Let's unpack some of that. You said you were
24 talking about little dudes running the neighborhood, what do
25 you mean by that?

1 A About YGF running wild in the neighborhood.

2 Q Okay. So at this point you're out of prison and you're
3 still concerned that YGF is running wild in the neighborhood.

4 A Yes.

5 Q And you go to the Greenmount neighborhood and you go to
6 talk to Geezy about that.

7 A Yes.

8 Q All right. So you just said that Mr. Johnson said they
9 don't run the neighborhood.

10 A Yes.

11 Q Was Mr. Johnson still YGF at this point or had he changed
12 his affiliation?

13 A Will said that he was -- that he was going to make him
14 the C.

15 Q Okay. So if Will was going to make him the C, does that
16 mean he was YGF or does it mean he was something else?

17 A He had to be J.

18 Q So you mentioned that you and Will set up a BGF regime in
19 Greenmount; right?

20 A Yes.

21 Q And that regime included all the positions in the bubble
22 that we just went through?

23 A Yes.

24 Q Can you tell us who, as best you can remember, was the
25 first commander or C of the Greenmount Regime?

1 A Rut.

2 Q I'm sorry, I didn't hear the answer to that question.

3 A The first regime was down Greenmount and Barclay.

4 Q I'm talking about the regime -- and let's see if we can
5 get a map here.

6 Let me ask it this way: Did there ever come a time where
7 you and Will set up a regime in the territory where YGF had
8 operated?

9 A Yeah, Will set it up.

10 Q Okay. Who was the first C of that regime?

11 A Geezy.

12 Q Okay. Now, after that Greenmount Regime was up and
13 running, did there come a time when you got locked up again?

14 A Yes.

15 Q When did you go back to jail?

16 A In like 2007, 2008. Yeah, 2007, 2008.

17 Q And how long was it until you got out back on the street,
18 when did you get out?

19 A 2012.

20 Q When you got back out of jail, who was running BGF on the
21 streets at the time?

22 A When I first came home, Donnie was.

23 Q Did Donnie have a title or role in the gang?

24 A Yeah, he was the hodari.

25 Q And what's the hodari?

1 A The one who runs the streets.

2 Q What eventually happened to Donnie?

3 A He ended up getting federally indicted.

4 Q When Donnie got federally indicted, who became the
5 hodari?

6 A Me.

7 Q So what was the reporting structure as between you as the
8 hodari, or the city-wide commander, and the bushmen who
9 reported to who?

10 A The bushmen reported to me.

11 Q And I think you explained earlier that the regimes
12 reported to the bushmen; is that correct?

13 A Yes.

14 Q So what was happening in the regimes filtered up to you
15 through the bushmen?

16 A Yes.

17 Q I'll show you another exhibit here, this is Government's
18 Exhibit DEM 1. Mr. Gray, does this fairly capture the
19 hierarchy between the hodari, the bush, and the regimes that
20 you were just talking about?

21 A Yes.

22 Q When you became the hodari, were there occasions where
23 you visited the different regimes and neighborhoods around the
24 city from time to time?

25 A Yes.

1 Q How would you get around to visit those regimes?

2 A Either Tim or Will.

3 Q Who was Tim?

4 A Dude -- he -- bush member. Member of BGF, bush member.

5 Q Okay. So you would go to neighborhood to neighborhood
6 with him?

7 A Yes.

8 Q Who drove?

9 A Tim.

10 Q In fact, was Tim your driver?

11 A Yes.

12 Q Who's that?

13 A Tim.

14 Q For the record, this is Government's Exhibit PHI 89.

15 Mr. Gray, when you would ride around the city with Tim
16 checking in on different regimes, were there ever occasions
17 where you would get money from BGF members in the
18 neighborhood?

19 A Yes.

20 Q Why was it that you would just be able to get money from
21 BGF members when you went to visit the neighborhoods?

22 A Because I asked.

23 Q And why would they give it to you just because you
24 asked?

25 A Because we was brothers. We didn't -- they were members

1 of the BGF.

2 Q Well, what if --

3 A Because I was the highest-ranking member of the BGF.

4 Q Mr. Gray, at that point in time, late 2012, early 2013,
5 were you using drugs?

6 A Yes.

7 Q What kind of drugs were you using?

8 A Heroin, crack.

9 Q How often were you using them?

10 A Every day.

11 Q When you and Tim Hurtt would ride around the city to
12 these neighborhoods checking in on the different regimes, were
13 there ever occasions you got drugs from BGF members to feed
14 your habit?

15 A Yes.

16 Q Would you have to pay for those drugs?

17 A No.

18 Q Why not?

19 A Brothers usually give it to me. I just ask for it, they
20 gave it to me.

21 Q And again, why would the brothers just give it to you,
22 just because they were nice --

23 A I was the highest-ranking member.

24 Q I'm sorry?

25 A I was the highest-ranking member.

1 Q Were there ever occasions where you and Tim went together
2 to check on the BGF Greenmount Regime?

3 A Yes.

4 MR. O'TOOLE: Objection, Your Honor.

5 THE COURT: You can approach.

6 (Bench conference on the record.)

7 THE COURT: The one reaction I have was I never
8 heard the witness refer to Tim Hurtt, only Tim, but that's not
9 your objection. Go ahead.

10 MR. O'TOOLE: That's not my objection. My objection
11 is this is -- with all respect to Mr. Martinez, this is
12 "The Mr. Martinez Show" with an occasional answer from the
13 witness. And I know what you said before and I understand. I
14 don't agree with it. But I think at some point, he's guiding
15 the show too much. He's telling -- he's putting words in the
16 record and the witness is saying yes or no.

17 THE COURT: Here's what's an acceptable method of
18 examination for a witness of this sort and what's not: What
19 is acceptable is for a prosecutor to ask a non-leading
20 question that elicits, whether it's in mumble form, jumbled
21 form, or whatever, but something that indicates that the
22 witness knows the answer to the question, and that then is in
23 the form of an answer to the question. Once that has occurred
24 to the Court's satisfaction, there's nothing wrong with the
25 prosecutor backing up, and for clarification purposes, then

1 leading the witness only with the answer that the witness just
2 supplied in mumble, jumble form.

3 And to the extent that defense counsel feel that the
4 prosecutor has exceeded the scope of the mumbled, jumbled
5 answer in the first place as the prosecutor begins to back up
6 and lead the witness back through it, I'll entertain the
7 objection for certain. But I have to say that most of the
8 time in following what Mr. Martinez has been doing here, I
9 have found his method to be acceptable and that it isn't just
10 all the prosecutor testifying, to use the old hackneyed
11 phrase, that he is proceeding in the proper way with an
12 inarticulate witness, which is that he is first eliciting from
13 the witness an answer to the question. Sometimes he gets
14 three or four pieces of information in the answer, and then he
15 goes back and unpacks it one element at a time.

16 I'm saying this -- I'm laying this out in some
17 detail to explain to counsel what I think is the acceptable
18 procedure and what is not. It's particularly important now,
19 as I sense that the focus of the inquiry is going to be more
20 on Greenmount. And it's in that area in particular,
21 Mr. Martinez, where I am instructing you to adhere closely to
22 the procedure that I have outlined. And while I understand
23 the need for you to back up and tease out what it is that your
24 witness is saying in his answer, before you launch into that
25 process, you're going to have to satisfy me that he -- that

1 the witness has supplied to you the foundational answer from
2 which you can go back and break up, whether it's into segments
3 or whatever, and through your own articulation make more clear
4 what it is the witness is saying. But it's only making more
5 clear. It's not supplying your words for his. That's the
6 subtle difference here.

7 MR. MARTINEZ: I do my best to keep that subtle
8 difference in mind, Your Honor. And what I'm trying do is
9 make sure that we take the information this witness has and
10 get it before the jury. And we're asking him, as you said,
11 open-ended questions, and then when he supplies an answer,
12 we're trying to organize it or come back and ask him to
13 explain --

14 THE COURT: Okay. And you're entitled to that and
15 it's a complicated task that you have and no one objected
16 previously. But I specifically was listening because you know
17 I know the cast of characters and I saw -- heard the reference
18 to Tim. I saw the picture of Tim. Then all of a sudden,
19 you're referring to him as Tim Hurtt. The witness never said
20 that.

21 MR. MARTINEZ: That was an error, Your Honor.

22 THE COURT: Okay. But that's an example of what I'm
23 talking about and I don't think it's a simple task that you
24 have. He's a difficult witness to examine, even though he's a
25 cooperator. It has to do with the communication style. And I

1 don't think that there's anything nefarious going on here in
2 terms of his trying to avoid or dodge or not answer or that
3 the Government is mishandling it in that respect. It's just a
4 difficult situation. He's very inarticulate. So be
5 careful.

6 MR. O'TOOLE: It's difficult -- if I may respond for
7 a second?

8 THE COURT: Yeah.

9 MR. O'TOOLE: It's difficult. I realize that and I
10 appreciate that. And I think there's also a situation where
11 we're assuming that it's not -- assuming facts not in
12 evidence. He assumes that something was -- I can't come up
13 with something specific right now, but Mr. Martinez will
14 assume something happened, so he'll ask him that. So he's
15 setting up -- he's setting up the wrong tee when he's asking
16 about it and fill it in.

17 THE COURT: Well, I will listen for that. I think I
18 have been listening for that. To this point, no -- nothing
19 improper has occurred as far as the Court's concerned.

20 But Mr. Martinez, particularly as you start to go
21 into this area that now has much greater relevance and
22 sensitivity to what's going on, just make darn sure you're not
23 ahead of your witness.

24 MR. MARTINEZ: I understand.

25 (The following proceedings were had in open court.)

1 THE COURT: You may continue.

2 Q (BY MR. MARTINEZ) Mr. Gray, just to refresh your memory,
3 you told us a few minutes ago that you and Tim would go around
4 checking in on different regimes from time to time; right?

5 A Yes.

6 Q Did you ever go to Greenmount and check in on that
7 regime?

8 A Yes.

9 Q Now, you also told us that when you would check in on
10 regimes, sometimes BGF members would give you money because of
11 your rank; right?

12 A Yes.

13 Q Did you ever get money like that in Greenmount?

14 A Yes.

15 Q And when you got money from BGF members in Greenmount
16 because of your rank, who gave it to you?

17 A I got money from Geezy.

18 Q Do you recall how many times Mr. Geezy gave you money?

19 A Three.

20 Q Tell us about the first time, can you remember generally
21 where that happened?

22 A Yeah, first time, I think was on 22nd.

23 Q 22nd, do you know what cross street?

24 A And Greenmount -- no -- yeah, 22nd and Barclay.

25 Q 22nd and Barclay. Can you point out on the map -- for

1 the record, this is Government's Exhibit GM 10 -- where the
2 location of that first meeting was?

3 A Right here (indicating).

4 Q So this was the first time Geezy gave you money; is that
5 correct, Mr. Gray?

6 A Yes.

7 Q Can you recall how much money he gave you?

8 A Like \$20.

9 Q How about the second time, can you remember generally
10 where that happened?

11 A Yeah, down on Lanvale.

12 Q Lanvale and what cross street?

13 A And Barclay.

14 Q Could you mark that on the map? I might need to move it
15 up, I'm sorry.

16 A (Indicating.)

17 Q Was anyone else there on that particular occasion?

18 A Me, him, Stimey, and Mustafa.

19 Q You mentioned Stimey and Mustafa; is that right?

20 A Yeah.

21 Q Let's start with Stimey, who is Stimey? Is he a member
22 of BGF?

23 A Yes.

24 Q What, if any, rank does he have in the gang?

25 A Bush.

1 Q Let me show you Government's Exhibit PHI 81. Do you
2 recognize that person?

3 A Yes.

4 Q Who is it?

5 A Stimey.

6 Q Now, you were explaining earlier that bush members have
7 oversight over regimes; is that correct?

8 A Yes.

9 Q What, if any, over -- what, if any, regimes did Stimey
10 have oversight as a bush member?

11 A Greenmount and Barclay, 22nd and Barclay.

12 Q All right. Now, you mentioned that Mustafa was also
13 there, was he in BGF?

14 A Yes.

15 Q Was he in the bush?

16 A No.

17 Q Okay. Who are we looking at here? This is Government's
18 Exhibit PHI 29.

19 A Mustafa.

20 Q Okay. So the three of you are hanging out at Lanvale and
21 Barclay, and I understand you to say that Geezy gave you money
22 on that occasion too; is that right?

23 A Yeah.

24 Q And how much money did he give you on that second
25 occasion?

1 A \$20 and two pills of crack.

2 Q Two pills of crack.

3 A Uh-huh.

4 Q Why did he give you that crack?

5 A Because I asked for it.

6 Q Did you have to pay for it?

7 A No.

8 Q Why not?

9 A Because we was all right.

10 Q I'm sorry?

11 A We was all right.

12 Q How about on that first time on Greenmount -- Barclay and
13 22nd, rather, did you get any drugs on that occasion?

14 A Yeah.

15 Q What kind of drugs did you get?

16 A Crack.

17 Q All right. And those were from -- who did you get those
18 drugs from?

19 A Geezy.

20 Q Now, was there a third time where you also got money from
21 Geezy?

22 A Yeah, \$40. We was down on the same spot, Greenmount and
23 22nd -- I mean, Lanvale and Barclay.

24 Q All right. So just to make sure I have it straight: One
25 time where it's drugs and money at Greenmount -- or Barclay

1 and 22nd, one time where it's drugs and money at Lanvale and
2 Barclay, and the third time where it's just money at Lanvale
3 and Barclay; is that right?

4 A Yeah.

5 Q Mr. Gray, during this time period when you and Tim were
6 checking in on the Greenmount Regime, did you ever come to
7 learn whether or not there were BGF drug shops in the
8 neighborhood?

9 THE COURT: Whether there were?

10 MR. MARTINEZ: BGF drug shops.

11 THE WITNESS: Yes.

12 Q (BY MR. MARTINEZ) Did you come to learn who was in
13 charge of those drug shops?

14 A Yes.

15 Q Who was that?

16 A Geezy.

17 Q In your recollection, Mr. Gray, could you tell us who,
18 during this 2013 time frame, who was the biggest BGF drug
19 dealer in Greenmount?

20 MR. O'TOOLE: Objection, Your Honor.

21 THE WITNESS: Excuse me?

22 THE COURT: Let's stop for a second. Objection.

23 MR. O'TOOLE: Objection.

24 THE COURT: Overruled. If he knows.

25 Q (BY MR. MARTINEZ) Let me rephrase it. During the 2013

1 time frame can you tell us whether -- can you tell us who ran
2 BGF's drug operation in Greenmount?

3 A Geezy.

4 Q I want to switch gears for a moment. You just told us
5 about a BGF member, a bush member named Stimey; right?

6 A Yes.

7 Q And you previously identified PHI 81 as his picture;
8 correct?

9 A Yes.

10 Q Now, I want to direct your attention to early 2013
11 shortly after you came out of prison. Did there come a time
12 where Stimey asked you to go to a meeting with him?

13 A Yes.

14 Q Did he explain who he wanted you to meet with?

15 A Yes.

16 Q Who was that?

17 A He wanted me to meet Geezy, Dorsey, and Taz.

18 Q Did he explain where he wanted you to meet him?

19 A Yeah, down at Taz's mother's house.

20 Q Let's talk about some of those people who haven't been
21 mentioned yet and we'll start with Taz. Who is Taz?

22 A Bush member.

23 Q So he's in BGF?

24 A Yes.

25 Q What part of the city is he from?

1 A East.

2 Q Does he have oversight over particular regimes or
3 neighborhoods in the city?

4 A Belnord.

5 Q Belnord, you said?

6 A Yes.

7 Q I'm going to show you Government's Exhibit PHI 91.

8 A Taz.

9 THE COURT: Wait for the question.

10 Q (BY MR. MARTINEZ) Do you recognize this individual?

11 A Yes.

12 Q You mentioned there was also -- Stimey also wanted you to
13 meet with a individual named Dorsey; is that correct?

14 A Yes.

15 Q Now, who was Dorsey, was he also in BGF?

16 A Yes.

17 Q What was his rank in the gang?

18 A Bush.

19 Q What part of the city was he from?

20 A East.

21 Q I'm showing you Government's Exhibit PHI 88, do you
22 recognize that person?

23 A Yes.

24 Q Who is that?

25 A Dorsey.

1 Q So this meeting that Stimey proposed at Taz's mom's
2 house, did you go?

3 A Yes.

4 Q And were the people that he described, Geezy, Taz and
5 Dorsey, were they there?

6 A Yes.

7 Q When you got there, did you learn why the meeting had
8 been called?

9 A Yeah, somebody shot Geezy.

10 Q Did you learn who shot Geezy?

11 A Somebody named Porky.

12 Q Did you know who Porky was?

13 A No.

14 Q Were you told whether Porky was in BGF?

15 A No.

16 Q What, if any, information were you given about how Porky
17 had come to shoot Geezy?

18 A I know he got shot in the house on North Avenue.

19 Q And what, if anything, did the group who was at Taz's
20 house -- Taz's mother's house, decide to do about the fact
21 that Geezy had been shot by Porky, how was that situation
22 handled?

23 A Stimey did the most of the talking and then he --

24 THE COURT: Could you repeat that answer, please?

25 THE WITNESS: Stimey did most of the talking at the

1 meeting and at -- the end result said that Porky had to get
2 dealt with and Geezy said he would take care of it hisself.

3 Q (BY MR. MARTINEZ) Let's unpack some of that answer. You
4 said the end result was Stimey saying that Porky had to get
5 dealt with.

6 A Yeah.

7 Q And I want you to ask the -- I want to ask you to tell
8 the ladies and gentlemen of the jury what your understanding
9 of that was.

10 A That he had to get dealt with, either they were going to
11 shoot him -- either we was going to shoot him back or we were
12 going to kill him.

13 Q So he was going to be shot or killed was your
14 understanding?

15 A Yes.

16 Q Okay. And so then you just said Mr. Johnson responded?

17 A He would do it himself.

18 Q Thank you. I want to show you one page from what's been
19 marked as Government's Exhibit SM 9.

20 MR. BUSSARD: Can I have that number again, please?

21 MR. MARTINEZ: SM-9.

22 THE COURT: Let's get -- it's confusing. Can you
23 get the other one off the screen?

24 MR. MARTINEZ: Sorry.

25 Q (BY MR. MARTINEZ) Who's in the back between the young

1 women on the steps there, Mr. Gray?

2 A Dorsey.

3 Q Dorsey, and then who's in the front?

4 A Geezy.

5 Q I want to change gears again. Have you ever heard of an
6 individual named Digga or who goes by the street name Digga?

7 A Yeah.

8 Q Can you tell us whether Digga was a member of BGF?

9 MR. FRANCOMANO: Objection.

10 THE COURT: Sustained. Foundation.

11 Q (BY MR. MARTINEZ) You said you were familiar with --

12 THE COURT: Ladies and gentlemen, there are a lot of
13 different reasons why a lawyer might object to the offering of
14 evidence. In ruling on those objections, I'm enforcing
15 something called the Federal Rules of Evidence. It's a
16 complicated book. I could show it to you up here, it's about
17 this thick. You don't have to learn the whole volume, I can
18 assure you.

19 But one of the requirements that we have is that a
20 question be premised on a proper foundation. In other words,
21 there has to be proof from the witness that they have a basis
22 for their knowledge. So when a lawyer objects and says lack
23 of foundation, they're contending that under the rules of
24 evidence, there hasn't yet been a sufficient showing as to how
25 or why the witness would know the answer to that question.

1 Just like a house, you've got to build the foundation first,
2 then you can build the rest of the house. Foundational
3 principle.

4 Now, having given you that explanation, it's really
5 not for you to decide at all. That's a gatekeeping
6 responsibility that the judge has. But we're going to be
7 living with each other for some time here and you're going to
8 hear things like that expressed in open court and you're
9 entitled to know what that means. And I'll explain a few more
10 concepts to you as we go along the way.

11 The objection was lack of foundation. Sustained.
12 What does it mean when the judge says sustained? That means
13 that the judge found that the objection was a sound one and
14 ruled in favor of the party objecting. What does it mean when
15 the judge says overruled? That means the judge is ruling
16 against the person or the lawyer who is making the objection
17 and that the question was deemed to be proper.

18 Okay. So the last objection was sustained. But now
19 Mr. Martinez will be given the opportunity to rephrase or
20 reframe his question, see if he can elicit whatever
21 information he's seeking in a way that's compliant with the
22 rules.

23 You may proceed, Mr. Martinez.

24 Q (BY MR. MARTINEZ) So Mr. Gray, you had told us that you
25 are familiar with an individual named Digga; is that

1 correct?

2 A Yes.

3 Q And how is it that you became familiar with an individual
4 named Digga?

5 A Just name.

6 Q And what were you -- what do you recall learning about
7 the name Digga or the individual named Digga?

8 A Before I ended up seeing him, I used to just hear his
9 name a lot.

10 Q And from whom would you hear his name?

11 A Dude -- other bush members.

12 Q And what would the other bush members tell you about
13 Digga?

14 MR. FRANCOMANO: Objection.

15 THE COURT: Sustained. It's -- but it's
16 foundational.

17 Q (BY MR. MARTINEZ) So Mr. Gray, you mentioned earlier
18 that as of 2013, you were the city-wide commander of BGF on
19 the streets; correct?

20 A Yes.

21 Q And you told the ladies and gentlemen of the jury that
22 bush members would report to you as part of BGF's street-wide
23 operations; is that correct?

24 A Yes.

25 Q And so then in turn, the bush members would receive

1 reports from the regimes about what was happening there?

2 A Yes.

3 Q So to the extent that you got information from members of
4 the bush, was that in connection with the ongoing conspiracy
5 to operate BGF on Baltimore streets?

6 A Yes.

7 Q So now, returning to where we were before, you said that
8 bush members would come to you with information about Digga?

9 A Yes.

10 Q What would they tell you?

11 MR. FRANCOMANO: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: Just that he was into a whole lot of
14 different stuff.

15 Q (BY MR. MARTINEZ) What kind of different stuff?

16 A Digga just kept coming up in miscellaneous stuff. He did
17 this and he did that. They didn't ever -- you know, sometimes
18 dudes be just griping, sometimes dudes don't like somebody. I
19 mean, if they just -- they never say that he did this or he
20 did that. They just said man, he stay in shit.

21 Q He stay in shit?

22 A Yeah.

23 Q Could you explain that a little more for the jury,
24 please?

25 A That, you know, like a mischievous child.

Q Okay.

A That's always into something.

Q Did the bush members ever indicate to you whether or not Digga was in J, was he BGF?

MR. FRANCOMANO: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

Q (BY MR. MARTINEZ) Yes, they did or yes, he was?

A Yes.

Q Did they indicate to you whether or not he was affiliated with a particular regime in a particular neighborhood?

A Yeah. I thought he was part of two regimes though.

Q Which two?

A Greenmount and Barclay and 22nd and Barclay.

Q Okay. Do you see Digga in the courtroom today?

A Yes.

Q Can you identify him?

A Yes.

Q Would you point him out for the ladies and gentlemen of the jury --

A Sitting in the back. He's sitting in the back, white shirt.

Q There's a bunch of people sitting in the back. Could you point out --

A White shirt.

1 Q -- an article of clothing he's wearing?

2 A White shirt and glasses.

3 THE COURT: Did you say white shirt and glasses?

4 THE WITNESS: Yes.

5 THE COURT: Anything else you can identify in terms
6 of his attire, his clothing?

7 THE WITNESS: He's sitting beside his lawyer. I
8 can't see through the computer.

9 THE COURT: The record will reflect that the witness
10 has identified Mr. McCants.

11 You may continue.

12 Q (BY MR. MARTINEZ) Mr. Gray, we showed you one tattoo
13 earlier. Do you remember that?

14 A Yes.

15 Q After all your years in BGF, can you recognize a BGF
16 tattoo when you see one?

17 A Yes.

18 Q All right. I'm going to show you a few pictures first,
19 but with the Court's indulgence I want to make sure I have the
20 right exhibit numbers.

21 THE COURT: Show them to counsel.

22 Q (BY MR. MARTINEZ) I'll start with PHT 11, Mr. Gray.
23 First, who are we looking at in this picture?

24 A Digga. Digga.

25 THE COURT: Where does it say PHT 11 on that

1 document? It should have a label on it.

2 MR. MARTINEZ: Sorry, Your Honor. Ms. Hoffman
3 handed me stickers and I just didn't put it on.

4 Q (BY MR. MARTINEZ) Now I'm marking PHT 12.

5 I want to zoom in and direct your attention here, can you
6 see the numbers above the pen there?

7 A Yeah. Yes.

8 Q What are those numbers?

9 A 276.

10 Q What do those numbers mean to you?

11 A The second letter, the seventh letter, and the sixth
12 letter of the alphabet.

13 Q And what are those letters?

14 A BGF.

15 Q How about the face here, who's that?

16 A George Jackson.

17 Q And so his name here, that name goes with the face; is
18 that correct?

19 A Yes.

20 Q How about the gorilla, what, if any, significance does
21 that have to you?

22 A Black gorilla, but it's like dudes got the wrong
23 perception of it because guerilla was -- the guerilla that
24 you're talking about in BGF is an urban warrior.

25 Q Have you ever seen a black gorilla used as a BGF

1 tattoo?

2 A Yes.

3 Q I'll show you now what I'm marking as PHT 13, can you
4 read those numbers at the top?

5 A 276.

6 Q And underneath this image here, what is that?

7 A A dragon.

8 Q And did you explain to the jury earlier that a dragon is
9 an image associated with BGF?

10 A Yeah.

11 Q What's the connection between a dragon and BGF?

12 A Because the original BGF tattoo is a dragon snatching a
13 guard out of a prison tower.

14 Q So can you tell us whether or not you recognize this
15 tattoo to be associated with BGF?

16 A Yes.

17 Q Yes, it is?

18 A Yes.

19 Q Mr. Gray, I have a few more questions for you before I
20 wrap up.

21 You told the jury earlier that you testified previously
22 in a federal case; is that right?

23 A Yes.

24 Q And before you testified in that case, did you meet with
25 agents and prosecutors to prepare for your testimony?

1 A Yes.

2 Q Do you recall providing them a letter during one of those
3 prep meetings?

4 A Yes.

5 Q Before I show it to you, could you explain what you were
6 doing in sending that letter?

7 A Trying to get out of testifying.

8 Q Why did you want to get out of testifying?

9 A Because I got cold feet.

10 Q Why did you get cold feet?

11 A Because I was scared.

12 Q Why were you scared?

13 A Because I was going to -- I thought I was going to die.

14 Q Why did you think you were going to die?

15 A Because I took a oath that said I was going to die.

16 Q And why did you think you were going to die if you broke
17 the oath?

18 A Because that's what I agreed to do.

19 MR. MARTINEZ: So I'm just going to mark this for
20 identification only -- actually, I need to get a number for
21 this.

22 THE COURT: If it's marked for identification only,
23 then don't display it. And it's marked for identification
24 only as?

25 MR. MARTINEZ: As --

1 THE COURT: Exhibit number?

2 MR. MARTINEZ: GP 13, your Honor.

3 THE COURT: GP 13 for identification only. Mark
4 it.

5 Q (BY MR. MARTINEZ) Do you recognize this document,
6 Mr. Gray?

7 A Yes.

8 Q Do you see in the middle here where it says, "Anything
9 would have told you that I am not, nor ever was, the leader of
10 BGF"?

11 A Yes.

12 Q What were -- what were you trying to say there to the
13 prosecutor in the other case?

14 A That I wasn't the leader of the BGF.

15 Q Who was the leader of BGF?

16 MR. O'TOOLE: Objection, Your Honor. May we
17 approach, please?

18 THE COURT: Yes.

19 (Bench conference on the record.)

20 THE COURT: Objection.

21 MR. O'TOOLE: First of all, I think he's reading
22 from the document that's not an exhibit.

23 THE COURT: Yes, well, let's not do that.

24 MR. O'TOOLE: Number one. Number two --

25 THE COURT: How come it's not just coming into

1 evidence?

2 MR. MARTINEZ: I can put it into evidence, that's
3 fine. We will.

4 THE COURT: Any objection?

5 MR. O'TOOLE: No.

6 THE COURT: That solves it.

7 MR. O'TOOLE: No, it doesn't.

8 THE COURT: That solves problem number one. What is
9 problem number two?

10 MR. O'TOOLE: The big problem with two is the last
11 trial he remembers was -- was mispurpose whether it was the --
12 but it was to whom, was it to himself. Mr. Martinez just
13 said, "Did you write a letter to the prosecutor?" That's just
14 in bad faith. That's a big question he established too and he
15 just said -- he just said, "Did you write a letter to the
16 prosecutor?"

17 THE COURT: Is that an open question?

18 MR. O'TOOLE: I think it is.

19 MR. MARTINEZ: I didn't think it was. We disclosed
20 the *Jencks* material from the prior case where he said, "I gave
21 this to the prosecutor" --

22 THE COURT: Keep your voice down.

23 MR. MARTINEZ: I gave this to the government during
24 a trial prep meeting, and so I emphatically reject the idea
25 that it's bad faith.

1 THE COURT: Keep your voice down.

2 MR. MARTINEZ: I thought we were all using the --
3 we're all working from the same universe of information. I
4 didn't understand it to be an open question.

5 THE COURT: Hold on a second. It's time for the
6 afternoon break anyway. We'll continue in a second.

7 (The following proceedings were had in open court.)

8 THE COURT: Ladies and gentlemen, we'll take our
9 afternoon recess. During this recess do not discuss the case
10 with anyone. Don't discuss it even among yourselves. Do not
11 allow yourselves to be exposed to any news articles or reports
12 that touch upon the case or the issues it presents or any
13 articles or reports that relate to any of the participants in
14 the case. Avoid all contact with any of the participants in
15 the trial. Do not make any independent investigation of the
16 law or the facts of the case. Do not look up anything on the
17 Internet. Do not consult an encyclopedia or a dictionary.

18 We'll take a 20-minute break because we have some
19 matters to take up outside of your hearing, so we will resume
20 at 5 minutes before 4:00 o'clock, 3:55. You're on recess
21 until then.

22 Please take the jury out.

23 (Jury left the courtroom.)

24 THE COURT: Be seated, please. All right. The jury
25 is out of the courtroom, as is the witness. The matter before

1 the Court is the admissibility of Exhibit GP 13, which I
2 understand the government offers at this time.

3 MR. MARTINEZ: We will, Your Honor.

4 THE COURT: And I understand that Defendant Johnson
5 objects to its admission, among other things; is that correct,
6 Mr. --

7 MR. O'TOOLE: No, we don't object.

8 THE COURT: You don't object to the --

9 MR. O'TOOLE: No, we want it.

10 THE COURT: Okay. GP 13 is received. Was there
11 another objection pending?

12 MR. O'TOOLE: There was.

13 THE COURT: Ms. Powell, you'll take custody of this
14 until the break is completed.

15 And what was the additional concern, Mr. O'Toole?

16 MR. O'TOOLE: The concern was that in the previous
17 trial, the Bazemore case, where this letter was prominently
18 discussed both -- it was a little bit in direct, but also a
19 lot in cross-examination by Mr. Solomon and perhaps others.
20 The question, among others, was where did this letter -- or
21 where was it intended to be going? Who were you sending it
22 to? Who were you writing it for? Why did you write it? And
23 it went on, you might remember, quite a while. And it never
24 was resolved, never was resolved.

25 THE COURT: Was the letter admitted in that trial?

1 MR. O'TOOLE: It was.

2 THE COURT: Okay.

3 MR. O'TOOLE: It was. And it was discovered in a
4 patdown. They found the letter. It wasn't sent, it wasn't
5 given to anybody. It was found in his pocket. He was patted
6 down, they found the letter, it was turned over to somebody
7 else, then they ended up discussing it.

8 But a big question was whose -- who was this letter
9 for? Why did you write it? And that's when Mr. Solomon went
10 through every line of the letter trying to figure it out and
11 it never got resolved.

12 THE COURT: Well, first of all, does the government
13 accept Mr. O'Toole's proffer that the letter was found, what's
14 implicit is, in the witness's possession?

15 MR. O'TOOLE: Right. It was his letter. I don't
16 think there's any question about that.

17 THE COURT: Do you accept that?

18 MR. MARTINEZ: It was found in his possession, I
19 think, and the timing was at a trial prep session where he was
20 meeting with agents and prosecutors. If I remember right from
21 Mr. Wallner's direct exam, he did say something to the effect
22 of "did you give this letter to the government." And so that
23 was the universe of information I was working with. That was
24 my understanding how that information came into the
25 government's possession.

1 THE COURT: Well, it occurs to me that during the
2 break you might want to get straight with Mr. Wallner, who I
3 saw in the courtroom a few minutes ago, the question of what
4 the government's position is globally on whether the letter
5 was, in fact, delivered or whether it was simply discovered
6 during this search. Because I do think that your question
7 before the break included the express statement that either
8 said or implied that the letter had been sent to the
9 prosecutor. First of all, is that correct, is that how you
10 phrased it?

11 MR. MARTINEZ: I think the exact phrasing was "did
12 you give it to the prosecutor."

13 THE COURT: Yes, implying that he had.

14 MR. MARTINEZ: Right. And that was my
15 understanding, but I --

16 THE COURT: That may well be your understanding, but
17 it may also be incorrect. And that's the sort of thing that
18 you need to get straightened out because Mr. O'Toole is
19 objecting to that and that's why he made a rather sharp attack
20 on you at the bench conference, which was a little sharp, but
21 you might have deserved it, depending on what the facts are.
22 I don't really know what they are yet, so let's get that
23 sorted out first.

24 Then, what is the significance of whether or not he
25 gave it to the prosecutor or not?

1 MR. O'TOOLE: I don't think the verb was "gave." I
2 think the verb was "sent." I think the purpose was to whom
3 was the letter -- or for whom was the letter intended. And
4 depending on who it was intended depends on whether he was
5 saying, like he did today, I'm trying to get out of
6 testifying, I'm trying to do this, I'm trying to do that.

7 THE COURT: I get it, but I don't understand the
8 global significance of it to you. I mean, it seems to me that
9 if he actually sent it to the prosecutor, which he may not
10 have, it's even better for you.

11 MR. O'TOOLE: Well, he said it in the letters. I
12 don't know what he said to the prosecutors in terms of whether
13 he was a leader of BGF or not. Here, he's told us he was the
14 highest person in the city in BGF --

15 THE COURT: In his testimony here in court.

16 MR. O'TOOLE: Yeah.

17 THE COURT: And you contend the letter is a
18 recantation of that.

19 MR. O'TOOLE: Yeah. And the letter says, "I wasn't
20 and never was a leader in BGF."

21 THE COURT: That's right. So why wouldn't it be
22 better for you if he actually did send it to the prosecutor,
23 which might be an overstatement of what occurred? But if
24 Mr. Martinez is guilty of overstatement, isn't it more in the
25 nature of scoring an own goal as opposed to putting one in

1 your net?

2 MR. O'TOOLE: Because I think the difference is it
3 was a letter for a purpose. He was trying -- he wasn't
4 recanting that he was, in fact, the leader of the BGF. He was
5 just saying, I'm going to say some words to get out of
6 testifying. So in the letter it says, "I am not and never was
7 a leader in BGF." That means that he's lying about the
8 content and the import of his existence.

9 THE COURT: Maybe so, but why does it matter whether
10 it was -- why is it his having -- why is Mr. Martinez having
11 said "you sent this to the prosecutor," and if that's a
12 misstatement, why is that harmful to your client? If
13 anything, it seems to me it helps your client.

14 MR. O'TOOLE: Court's indulgence for a second.

15 (Pause in the proceedings.)

16 MR. O'TOOLE: I'm reminded in the colloquy back and
17 forth with Mr. Solomon he said, "I wasn't writing it to
18 anybody, I was writing to myself." And there's only --

19 THE COURT: He's only recanting to himself as
20 opposed to recanting to the government. That would seem to be
21 of less significance -- less helpful to you.

22 MR. O'TOOLE: Whether it's helpful or not, I think,
23 is a position that I think that we're taking, that in the
24 letter he was saying truthfully to himself "I am not, nor was
25 I ever, a leader in BGF." And the point is that he's either

1 lying now or then. And of course, we'll go into that.

2 But --

3 THE COURT: Were you lying to a prosecutor or were
4 you just lying to yourself?

5 MR. O'TOOLE: He probably wouldn't lie to himself.
6 You probably don't lie to yourself in writing. When I lie to
7 myself, I just say it quietly.

8 THE COURT: You're snatching defeat from the jaws of
9 victory. Mr. Martinez is -- by your recount of the facts, has
10 stumbled and said something about the letter that is more than
11 is true.

12 MR. O'TOOLE: I'm not looking to fall. All I'm
13 looking to do is have the truth come out the way the testimony
14 really came out.

15 THE COURT: Well, I'm just looking to have the truth
16 come out, period. So what we'll do is allow the government
17 during the break to try to sort this issue out, then we'll
18 hear from the government before the jury is brought back in as
19 to what the government's position is with respect to whether
20 or not the letter was sent or not sent or maybe you don't
21 know. Maybe you're just going to have to ask the witness and
22 you need to pull back any characterization or suggestion that
23 you made previously about what happened with the letter and
24 ask the witness what happened with it.

25 MR. MARTINEZ: Understand.

1 THE COURT: And Mr. O'Toole will have his
2 opportunity to cross-examine. I promise you, that time is
3 coming. It will happen.

4 MR. O'TOOLE: I think whatever the facts develop, I
5 think my comment that it was in bad faith, I take back, and I
6 apologize to Mr. Martinez.

7 THE COURT: I appreciate that. And that's in the
8 spirit of how this bar should work with each other even though
9 you are adversaries.

10 So we will leave for the break on a positive note.
11 The defendants are remanded. We'll reconvene at 5 minutes
12 before 4:00.

13 MR. O'TOOLE: Your Honor, what time is the Court
14 going to leave today, 4:30?

15 THE COURT: 4:30. We're only going to go until
16 4:30, may stretch it to 4:35. But I've got to tuck something
17 in between 4:30 and 5:00 o'clock when I have to give a talk
18 somewhere else.

19 MR. O'TOOLE: Would the Court consider doing
20 cross-examination beginning in the morning?

21 THE COURT: Let's see where we are. How close are
22 we to the end of the direct?

23 MR. MARTINEZ: Within five or ten minutes. I'm
24 wrapping up.

25 THE COURT: We'll see where we are, Mr. O'Toole.

1 I'm not promising that.

2 MR. O'TOOLE: That's good. Thank you.

3 (A recess was taken.)

4 THE COURT: Bring the jury in. Oh, before you do,
5 do we have an answer to our question?

6 MR. MARTINEZ: We do, Your Honor, and it's a little
7 complicated. I talked to Mr. Wallner. Mr. Wallner remembered
8 that Mr. Gray gave the letter to one of the case agents as he
9 was being transported from Talbot County -- from the detention
10 center where he was being held for an interview. And then I
11 double checked with the case agent, and the case agent said
12 no, when we pulled him out and we were putting him in the van,
13 we found it on his person, but then it emerged during a
14 meeting that that was -- he wanted to give it to us, and he
15 was planning to give it to us at that meeting.

16 So I think the way I would propose clarifying the
17 record on this when he comes back and the jury's here, the
18 first question would be, Mr. Gray, let's talk about that
19 letter, to whom was it addressed or who was the audience for
20 that letter, and just go from there.

21 THE COURT: Who did you intend to receive it?

22 MR. MARTINEZ: Yes.

23 THE COURT: All right. Mr. O'Toole.

24 MR. O'TOOLE: Your Honor, we'll just cross-examine
25 him.

1 THE COURT: Sorry?

2 MR. O'TOOLE: We'll just cross-examine him on that
3 issue.

4 THE COURT: Of course you will.

5 MR. O'TOOLE: Right. So that's just the issue. So
6 at least now we know it's not being introduced as fait
7 d'accompli.

8 THE COURT: I think we have a satisfactory
9 resolution to that contretemps and we will proceed
10 accordingly.

11 Bring the jury in.

12 (Jury entered the courtroom.)

13 THE COURT: Be seated, please.

14 Mr. Martinez, you may continue your direct
15 examination of Mr. Gray.

16 MR. MARTINEZ: Thank you, Your Honor.

17 Q (BY MR. MARTINEZ) Mr. Gray, before the break we were
18 discussing the letter that we marked here as
19 Government's Exhibit GP 13, do you remember that discussion?

20 A Yes.

21 Q I want to circle back to a question I asked you earlier
22 and just rephrase it: Who was the audience for this letter,
23 to whom were you sending it or writing it?

24 A The prosecutor.

25 Q Okay. And before we ended and took our break, I was

1 directing your attention to a couple lines: "Anything would
2 have told you that I'm not, nor was ever, the leader of BGF."

3 What were you saying here, Mr. Gray?

4 A That I wasn't the leader.

5 Q Who was the leader at this time?

6 A Kevbo.

7 Q And what was Kevbo's title within the gang?

8 A Gyedi.

9 Q How is the Gyedi different -- well, what was your
10 title?

11 A Hodari.

12 Q And so the hodari, you said earlier, was the city-wide
13 commander; is that correct?

14 A Yes.

15 Q What is the Gyedi?

16 A The head of J, the head of Jamaa.

17 Q The head of all of the BGF?

18 A Yes.

19 Q So does the Gyedi outrank the hodari?

20 A Yes.

21 Q Does the Gyedi have to be in prison or can he be on the
22 streets?

23 A Prison.

24 Q How about this next sentence, "I copped out to some shit
25 I didn't do. It's going to come out when I have to tell the

1 truth," what were you talking about there, Mr. Gray?

2 A In my plea agreement it said I actually killed somebody
3 and I didn't.

4 Q So are you saying --

5 A They said that I told somebody to kill somebody and I
6 didn't.

7 Q Okay. So are you telling the ladies and gentlemen of the
8 jury that at the time you wrote this letter there was a
9 mistake in your plea agreement?

10 A Yes.

11 Q Can you tell us whether or not that mistake was
12 corrected?

13 A Yes.

14 Q When was it corrected, if you remember?

15 A The day that we discussed this letter, at my trial.

16 Q At your trial?

17 A Yes.

18 Q So is that when you testified in the previous trial under
19 your cooperation agreement, is that what you're talking
20 about?

21 A Yes.

22 Q Okay. Once that mistake in your plea agreement was
23 corrected, was this statement that you "copped out to shit you
24 didn't do," was that true anymore?

25 A No.

1 Q Did you go ahead and testify in that -- well, you
2 mentioned earlier that you sent this letter because you wanted
3 to get out of testifying; is that correct?

4 A Yes.

5 Q Did you go ahead and testify in that --

6 MR. O'TOOLE: Objection, Your Honor.
7 Mischaracterization of the word "sent."

8 THE COURT: Overruled.

9 Q (BY MR. MARTINEZ) Mr. Gray, you put this letter together
10 and you said earlier that the intent behind it was that you
11 wanted to get out of testifying; is that right?

12 A Yes.

13 Q Did you go ahead and testify?

14 A Yes.

15 Q Did you testify truthfully?

16 A Yes.

17 Q All right. I want to circle back before we finish the
18 one topic that we addressed before, and we were talking
19 about -- do you remember talking about the MOJ and the
20 different sanctions that can be imposed?

21 A Yes.

22 Q And do you remember explaining to the jury that there
23 were three different kinds of sanctions?

24 A Yes.

25 Q Could you refresh our memory as to those three?

1 A Fines, beatdowns, and death.

2 Q And I was asking you some questions, remember, about, you
3 know, who could order a sanction of death and this and that;
4 right?

5 A Yes.

6 Q So I just want to make clear, sanctions are -- are those
7 within the gang or sanctions -- can those also be imposed on
8 people outside the gang?

9 A Sanctions are for people within the gang.

10 Q So only within J?

11 A Yes.

12 Q And so that whole chain of command that we were
13 discussing in terms of who can order which sanction, that only
14 applies to things that are ordered against BGF members; is
15 that correct?

16 A Yes.

17 MR. MARTINEZ: Just a moment, Your Honor.

18 Those are all the questions we have.

19 THE COURT: Cross-examination, Mr. O'Toole.

20 CROSS-EXAMINATION

21 BY MR. O'TOOLE:

22 Q Mr. Gray, good afternoon.

23 A Good afternoon.

24 Q Mr. Gray, my name is Jeffrey O'Toole, and along with Paul
25 Enzinna, represent Mr. Gerald Johnson. I'm going to ask you

1 some questions. Is that all right?

2 A Yes.

3 Q All right. When you introduced yourself today, first
4 thing you said -- you remember what you called yourself, what
5 was your name?

6 A Timothy Gray.

7 Q Do you remember testifying in the trial we just talked
8 about previously, how did you introduce yourself in that
9 trial?

10 A Timothy Gray.

11 Q Are you sure you didn't introduce yourself as
12 Michael Gray?

13 A Timothy Michael Gray, that's my name.

14 Q All right. But you didn't introduce yourself as Timothy
15 Michael Gray, you introduced yourself as Michael Gray;
16 correct?

17 A I don't recall.

18 Q All right. You told Mr. Martinez that you call yourself
19 a number of things: MG, Uncle Mike, Michael Gray,
20 Timothy Gray; is that right?

21 A Yes.

22 Q Is the reason you use so many different names is to hide
23 who you really are?

24 A No.

25 Q All right. Have you ever used the name Michael Parker?

1 A Yes.

2 Q Is Michael Parker one of your real names?

3 A No, that's my family name.

4 Q All right. Isn't it true you use different names to try
5 to avoid sanctions, to try to avoid sanctions when you get
6 locked up?

7 A No.

8 Q Isn't it true that when you testified last time you said,
9 "I use different names when I get locked up," do you remember
10 that?

11 A No, because I only used a different name one time when I
12 got locked up.

13 Q But you did use a different name for the purpose of
14 hiding who you really were; correct?

15 A If I used a different name, yes.

16 Q So your answer is yes?

17 A Yes.

18 Q Okay. You told Mr. Martinez about some of your
19 convictions. I'd like to go back and look at those and try to
20 figure out, is it true your first conviction was in 1986, a
21 conviction for robbery with a deadly weapon?

22 A Yes.

23 Q All right. And what was your -- in that case you were
24 how old?

25 A 17.

1 Q 17.

2 A 18.

3 Q 18, that was your first conviction?

4 A Yes.

5 Q All right. You were born in '68?

6 A Yes.

7 Q All right. So you're -- and what was your sentence in
8 that case, did you get jail time?

9 A Yeah, like I think eight years.

10 Q For your first conviction?

11 A Yes.

12 Q What was the weapon that you used?

13 A They didn't never recover the weapon.

14 Q But you were convicted of -- you pled guilty or were
15 convicted of robbery with a dangerous weapon?

16 A Yes.

17 Q What was the weapon that they accused you of?

18 A They never -- they never said it.

19 Q You just pled guilty to something, even though they
20 didn't have --

21 A I was young. Yes.

22 Q You made a mistake?

23 A No -- yeah, I was young.

24 Q So you never had a weapon. You were 18 years old, you
25 pled guilty to armed robbery with a dangerous weapon, and

1 didn't have a weapon.

2 A I was scared. I copped out.

3 Q All right. So you copped out to a felony, you got how
4 many years, seven years?

5 A Seven or eight.

6 Q Seven or eight years for robbery, unarmed robbery, and
7 you went to jail for how long?

8 A Maybe six years. Four, five years, six years.

9 Q All right. So in '86 you went to jail until 1991?

10 A Yeah.

11 Q What happened after that, were you let out on parole?

12 A Yes.

13 Q And did you violate your parole?

14 A Yes.

15 Q What was the violation of parole for?

16 A Attempt murder.

17 Q I'm sorry?

18 A I think attempt murder.

19 Q Attempted murder, you think attempted murder?

20 A Yeah, because they called it something else. I say -- I
21 always say it's attempt murder.

22 Q So you were on parole and you were told to mind the laws
23 and mind the regulations of society and you chose to violate
24 your parole; correct?

25 A Yes.

1 Q By attempting to kill somebody?

2 A That's what the government said.

3 Q That's what the government said?

4 A Yeah.

5 Q Were you convicted by a trial or were you convicted by a
6 plea?

7 A A plea.

8 Q So the Government said it and you just went ahead and
9 pled guilty?

10 A Yes.

11 Q Why is that?

12 A I was young, I didn't know no better.

13 Q In that case you were a little older. You weren't 18,
14 now you were in your 20s; right?

15 A Yes.

16 Q And the first time you pled guilty to an armed robbery
17 with no gun and this time you pled guilty to what?

18 A Attempt murder.

19 Q Attempted murder. And you got how much more time?

20 A 12 years.

21 Q 12 more years. And when does that -- how much of that 12
22 years did you do?

23 A Until like '98.

24 Q You told Mr. Martinez that you were convicted of
25 selling -- possession with intent to distribute heroin; is

1 that correct?

2 A Yes.

3 Q And when was that?

4 A Like 2001, somewhere around there.

5 Q All right. Let me ask you a question: Were there any
6 crimes that you committed that you weren't ever caught for?

7 Let me ask you more specifically: Toward the end of your
8 testimony with Mr. Martinez, I think you said that there was a
9 merger of the BGF -- of the YGF and BGF; right?

10 A (Nodding.)

11 Q And there were some young bucks who weren't going along
12 with the program, do you remember that?

13 A Yes.

14 Q All right. And you sent the word down to take care of
15 one of those young bucks, didn't you?

16 A Yes.

17 Q All right. So and at the end, that young buck was
18 killed; wasn't he?

19 A I don't know. I don't know who it was.

20 Q But isn't it true that -- who was it that you sent down
21 to take care of that young buck, was it Will?

22 A I told Will.

23 Q All right. And Will got back to you and said he took
24 care of it; right?

25 A Yeah, he said it was taken care of.

1 Q Do you remember Will ever telling that he took care of
2 something without having taken care of it?

3 A No.

4 Q So you knew that Will successfully took care of it,
5 didn't you?

6 A I know it was taken care of, if he said it was taken care
7 of.

8 Q I'm sorry?

9 A If he said it was taken care of, I just assumed it was
10 taken care of.

11 Q So you assumed that he was killed; right?

12 A I assume -- okay, yeah.

13 Q So you assume he was killed. So you sent the word down
14 for the killing of a young person who did not want to become
15 BGF and you told Will to take care of it. And Will knew what
16 you meant by taking care of it; right?

17 A Yeah.

18 Q Taking care of it --

19 A Yes.

20 Q -- means do the work, get it done?

21 A Uh-huh.

22 Q Kill him, because you're going to make a example out of
23 him; right?

24 A Yes.

25 Q So the purpose of the kill was to make an example out of

1 that person; right?

2 A Yes.

3 Q All right. And as far as you know and assume, he was
4 killed; right?

5 A Yes.

6 Q All right. Did you feel bad about that?

7 A No.

8 Q Why not, did you feel any remorse?

9 A No.

10 Q You didn't, did you know who it was?

11 A No.

12 Q Did you know who his family was?

13 A No.

14 Q Did you care?

15 A No.

16 Q All right. Were you ever charged for it?

17 A No.

18 Q Did anybody ever find out that you were involved in the
19 conspiracy to kill and in fact killed somebody?

20 A No.

21 Q All right.

22 A Until I told them.

23 Q I'm sorry?

24 A Until I told them.

25 Q Until you told who?

1 A The government.

2 Q All right. And were you charged for that later?

3 A No.

4 Q So you actually, in the process of talking to the
5 government and working out your plea agreement that you talked
6 with Mr. Martinez about, that you had to come and testify
7 truthfully in the trials; correct?

8 A Yes.

9 Q Including this trial?

10 A Yes.

11 Q And other trials in the future?

12 A If need be.

13 Q All right. And do you know whether there are other cases
14 planned for you to testify in?

15 A No.

16 Q You don't know?

17 A No.

18 Q Are you preparing for other cases to testify against?

19 A No.

20 Q No. All right. So with respect to the young buck that
21 got killed, you told the government about that when you were
22 debriefing; correct?

23 A Yeah.

24 Q All right. And you were never charged?

25 A No.

1 Q All right. Let's talk for a minute about the Cut, you
2 told us the Cut was Maryland Correction Center?

3 A Maryland House of Corrections.

4 Q House of Corrections, where is that located?

5 A In Jessup.

6 Q I'm sorry, in Jessup?

7 A Jessup.

8 Q And why were you at the Cut?

9 A For the 12 years.

10 Q 12 years for the attempted murder?

11 A Yes.

12 Q All right. And how long had you been there when there
13 was an episode with Pizza and Mustafa? You know what I'm
14 talking about; right?

15 A About four years.

16 Q When I say Mustafa and Pizza incident, you know what I'm
17 talking about?

18 A Uh-huh.

19 Q So when that incident -- and we'll talk about that in a
20 minute. When that incident happened, how long had you been at
21 Jessup?

22 A Four years.

23 Q Four years. And at that -- what was the year of that,
24 what was the year that took place, late '0 -- what would that
25 be?

1 A I can't recall.

2 Q You don't recall. All right. We'll figure it out before
3 we finish.

4 A Uh-huh.

5 Q All right. So what happened there -- and that case was a
6 friend of yours, somebody you knew was stabbed; is that
7 correct?

8 A Yes.

9 Q And that was Pizza?

10 A Yes.

11 Q Now, was Pizza BGF?

12 A Yes.

13 Q All right. And you were BGF?

14 A Yes.

15 Q All right. How long had you been BGF at that point?

16 A Maybe a year, two.

17 Q Some time.

18 A Yeah.

19 Q All right. And were you friendly with Pizza or you just
20 knew he was BGF?

21 A I knew he was BGF.

22 Q All right. But you weren't buddies?

23 A Yeah, we were brothers.

24 Q You were brothers, were you close to him or not close to
25 him?

1 A Yeah, we're brothers.

2 Q I'm asking were you close?

3 A We were brothers. We were like brothers.

4 Q Like brothers, all right. So what happened, Pizza gets
5 stabbed by somebody?

6 A Yes.

7 Q Who stabbed Pizza?

8 A Mustafa, Jay, and Lineal.

9 Q I'm sorry, are you naming three different people?

10 A Yeah.

11 Q So three different people stabbed Pizza?

12 A Yes.

13 Q So what did you do -- was Pizza killed?

14 A No.

15 Q Was he badly injured or not badly injured?

16 A He was taken to the ICU.

17 Q In the prison itself?

18 A No, he was sent out, medevac hospital. They medevacked
19 him to the hospital.

20 Q What did you do about it?

21 A Stabbed Mustafa.

22 Q I'm sorry?

23 A I stabbed Mustafa.

24 Q You stabbed Mustafa, where did you get the knife?

25 A I made it in jail.

1 Q Did you kill Mustafa?

2 A No.

3 Q All right. Were you ever arrested for that?

4 A Yeah.

5 Q You were arrested for --

6 A No, not prison arrested. I was locked up in jail. I
7 went on lockup. I was under investigation.

8 Q I'm sorry, I interrupted you. Go ahead.

9 A I said I went on lockup for it.

10 Q All right. You were caught for stabbing Mustafa?

11 A No.

12 Q So why --

13 A I was under investigation.

14 Q Were you ever arrested for stabbing Mustafa?

15 A No.

16 Q So you got away with stabbing Mustafa; right? Yes?

17 A Yeah, I guess so.

18 Q Yes. All right. So you, in retaliation -- is that a
19 good word to use -- in retaliation for Mustafa stabbing Pizza,
20 you stabbed Mustafa?

21 A Yes.

22 Q And how badly was Mustafa hurt?

23 A He laid beside Pizza.

24 Q Say that again?

25 A He laid beside Pizza in the ICU.

1 Q Oh, he laid beside Pizza, is that what you said?

2 A Yes.

3 Q After that happened did that give you a certain
4 credibility, a certain position in the jail?

5 A No, because what you don't know is, I wasn't the only one
6 that stabbed him.

7 Q Would you say that again, please?

8 A I said no, because what you don't know is that I wasn't
9 the only one that stabbed him.

10 Q I only know what you're telling me, so I'm going to ask
11 you. In the previous trial, isn't it true that you said after
12 you stabbed Mustafa it gave you a certain credibility, a
13 certain position as an enforcer in the prison?

14 A No, I didn't say that.

15 Q You never said that, you never said that after you
16 stabbed Mustafa you were given -- you were seen as bigger and
17 tougher than you were before you stabbed Mustafa?

18 A No, because I was always me. I was always me. That's
19 why BGF chose me, because I was always me.

20 Q Okay. So you're saying now that you were not given any
21 more belief or credibility --

22 A No, I got a position.

23 Q You got a position?

24 A They made me the MOD.

25 Q They made you MOD, what's MOD?

1 A Minister of defense.

2 Q So they made you MOD, minister of defense, after you
3 stabbed Mustafa?

4 A Yeah.

5 Q And because you stabbed Mustafa, they made you MOD. So
6 are you telling us because you stabbed Mustafa, you got a
7 position in the BGF?

8 A No, you saying that. I'm saying --

9 Q I'm asking you is that true?

10 A I don't know why they gave me the position. They might
11 have needed the position filled.

12 Q All right. So you're telling us you got the position as
13 an MOD after you stabbed Mustafa, but you don't know why?

14 A Yeah.

15 Q All right. When you stabbed Mustafa, you were trying to
16 kill him; correct?

17 A I didn't care if I did or not.

18 Q You didn't care if you killed him or not. Did you care
19 that you were taking a human life or trying to take a human
20 life?

21 A Not at the time.

22 Q Did you feel any remorse, any contrition because of
23 that?

24 A Yeah, we ended up being all right.

25 Q It ended up being all right?

1 A Yeah, me and him ended up being all right.

2 Q All right. At the time you put the knife to his body,
3 you didn't care if he died or lived; correct?

4 A Correct.

5 MR. MARTINEZ: Asked and answered.

6 THE COURT: Overruled.

7 Q (BY MR. O'TOOLE) Correct?

8 A Correct.

9 Q Thank you. After you served time for your escape, was
10 that the last time you served until 2012, 2013?

11 A No, that's when I came home, 2012.

12 Q Right. And you came home because you served all your
13 time for having escaped; right?

14 A Yes.

15 Q And you didn't take parole because you didn't want
16 parole; right?

17 A Right.

18 Q You didn't want parole because you weren't that good on
19 parole; right?

20 A Exactly.

21 Q You decided just to do your time, get it over with, and
22 hit the street?

23 A Yes.

24 Q All right. When you hit the street, did you have a role
25 in BGF?

1 A Yes.

2 Q What was your role?

3 A I was the highest-ranking member of the BGF.

4 Q Why were you the highest-ranking member?

5 A Because I was one of the original seven. So when I came
6 home, I was the highest-ranking member on the street. I was
7 the highest-ranking member in prison.

8 Q Okay. And what was the title that you were given?

9 A None. When I first came home, none. I didn't want no
10 title.

11 Q You said that you were the highest-ranking person, does
12 the highest-ranking person have a label, a title?

13 A No, because I put somebody else and made them the
14 hodari.

15 Q So you were the highest-ranking person and then you said,
16 I'm going to use my highest-ranking position to name somebody
17 else as the highest-ranking person?

18 A I've been doing it the whole time I was BGF.

19 Q Just yes or no; is that correct?

20 A Yes.

21 Q All right. And who was that that you made the
22 highest-ranking -- that you made the top of the heap --

23 A Donnie.

24 Q Say that again?

25 A Donnie.

1 Q Donnie. All right. We'll get back to Donnie in a
2 minute.

3 You were shown an exhibit by Mr. Martinez, the 22s and
4 the 33s; correct?

5 A Yes.

6 Q Was that your handwriting?

7 A No.

8 Q Somebody else's handwriting?

9 A Yes.

10 Q All right. What are the -- what are they in general,
11 these 22s? When you came out of prison -- strike my -- when
12 you came out of prison, did you have to take an oath?

13 A No.

14 Q You didn't take an oath when you came out of prison?

15 A No.

16 Q Did you have to prove that you knew the 22s and the
17 33s?

18 A No.

19 Q All right. Did you have to -- when somebody else becomes
20 BGF, do they take an oath or do they learn the 22s and the 33s
21 first?

22 A They learn the 22s and 33s.

23 Q They learn those before they take an oath?

24 A Yes.

25 Q All right. So they learn the rules and they learn the

1 constitution and then they take an oath?

2 A Yes.

3 Q All right. These rules -- the first rule says don't put
4 your hand on another BGF member; right?

5 A Yes.

6 Q All right. Have you ever violated that rule?

7 A I haven't.

8 Q You have or haven't?

9 A I haven't.

10 Q I'm sorry?

11 A I said I haven't.

12 Q Have not?

13 A Yes.

14 Q Have not. All right. Have you had others do that in
15 your stead, instead of you?

16 A If it's a sanction.

17 Q All right. So you've ordered people to do that, put
18 their hand on other BGF members, you just haven't done it
19 yourself?

20 A It says don't put your hand on a brother without
21 confirmation.

22 Q All right.

23 A I gave confirmation.

24 Q Confirmation that it was --

25 A Okay to do it.

1 Q -- justified?

2 A Yes.

3 Q All right. Do you think you have ever violated any of
4 the 22s or 33s, any of the --

5 A Yes.

6 Q Pardon me?

7 A Yes, I violated them -- I violated many of them
8 probably.

9 Q Were you ever sanctioned?

10 A No.

11 Q All right. Have any of your -- the people underneath you
12 violated the 22s or the 33s?

13 A Yes.

14 Q Have they been sanctioned?

15 A Some of them.

16 Q All right. So other people in the organization get
17 sanctioned, but you didn't get sanctioned?

18 A Exactly, as with any organization.

19 Q Any organization, meaning the people at the top don't
20 have to answer to the same rules as the people down below?

21 A Any organization in the world.

22 Q Is that a yes?

23 A Yes.

24 Q All right. You talked to Mr. Martinez about the plea
25 agreement and your plea in the case, what was the name of that

1 case?

2 A The name of it was --

3 Q Was it Bazemore?

4 A There's 14 of us.

5 Q But it was called -- the main name was Bazemore; is that
6 correct?

7 A No. My name was at the top of the indictment.

8 Q All right. So you -- the plea that you took, you were
9 actually a defendant in the case that you testified in
10 eventually; is that correct?

11 A Yes.

12 Q All right. And you were -- you pled guilty to what, to a
13 RICO racketeering conspiracy?

14 A Yes.

15 Q And you know what the racketeering is?

16 A Yes.

17 Q All right. And you told us before that you pled guilty
18 to a murder or a robbery, an armed robbery, but you hadn't
19 really been armed, and then you pled guilty to attempted
20 murder, but you really hadn't attempted it and you went to
21 jail for something that you maybe hadn't done.

22 In this case when you pled guilty to the racketeering,
23 were you really guilty?

24 A Yes.

25 Q All right. So you pled guilty to Count 1 of the

1 indictment; is that correct?

2 A Yes.

3 Q All right. Now, that wasn't the only count in the
4 indictment, was it?

5 A That I pled guilty to, no.

6 Q I'm sorry?

7 A No.

8 Q There were other counts?

9 A Yes.

10 Q And the second count of the indictment was conspiracy to
11 possess with intent to distribute controlled dangerous
12 substances; correct?

13 A Yes.

14 Q And that was dropped when you pled guilty to Count 1;
15 correct?

16 A No.

17 Q No?

18 A No. I got found guilty of the first count, the second
19 count, and the sixth count.

20 Q You pled guilty to the first count?

21 A The second count and the sixth count.

22 Q You pled guilty to three counts in the indictment?

23 A Yes.

24 Q All right. We'll get back to that also in a minute. And
25 you told Mr. Martinez that the purpose of pleading guilty was

1 that you didn't want to spend the rest of your life in jail?

2 MR. MARTINEZ: Objection --

3 THE WITNESS: I never told him that.

4 Q (BY MR. O'TOOLE) But you told him that you wanted to cut
5 back the time that you would have to spend in jail --

6 THE COURT: There's an objection pending. Do you
7 want to withdraw the question and rephrase?

8 MR. O'TOOLE: I'll rephrase it, Your Honor.

9 THE COURT: The question has been withdrawn. You
10 may continue.

11 Q (BY MR. O'TOOLE) Mr. Gray, I thought you told
12 Mr. Martinez something to the effect that the reason that you
13 pled guilty was that you were afraid that if you were
14 convicted you would spend a lot of time in jail.

15 A No, I never said that.

16 Q You never said that?

17 A No.

18 Q What's the reason that you pled guilty then?

19 A That's the reason why, because I don't want to spend the
20 rest of my life in jail.

21 Q I thought that's what I asked you.

22 A No, that ain't what you asked me.

23 Q All right. Well, I'm asking you now: Is the purpose
24 that you're cooperating in this plea agreement -- the plea
25 agreement called for you to cooperate with the government;

1 correct?

2 A Uh-huh.

3 Q And they called for you to cooperate not only in that
4 case, the Bazemore case, the case that you were a defendant
5 in, but in any other case the government wants to use your
6 testimony; correct?

7 A Yes.

8 Q All right. And one of the conditions of your accepting
9 the plea of -- the deal that you got, was that you testify,
10 you told Mr. Martinez, truthfully; is that right?

11 A Yes.

12 Q Is that a word that the government told you that you're
13 supposed to tell the -- in your testimony, that you're
14 supposed to testify truthfully?

15 MR. MARTINEZ: Objection.

16 THE COURT: Overruled. He can answer.

17 THE WITNESS: No.

18 Q (BY MR. O'TOOLE) And where did the word "truthfully"
19 come from?

20 A Yeah, it said "truthfully" and it said -- it's written.

21 Q All right. So --

22 A In the -- yeah, the government didn't tell me that. It's
23 written -- because it's written in the plea agreement.

24 Q All right. So one of the conditions of your deal is that
25 you testify and tell the truth; correct?

1 A Yes.

2 Q All right. So if you testify in court in this case or in
3 any case and don't tell the truth, it's a big deal; right?

4 A Yeah.

5 Q And you could lose your deal; correct?

6 A Yeah.

7 Q All right. Now, do you know what you're hoping for --
8 what -- when you testified in the Bazemore case, you were
9 hoping that that would cause you to get your deal reduced a
10 little bit; right, or some; correct?

11 A Yeah.

12 Q And your hope here is today, in front of this jury, in
13 this court, that you'll testify and get your sentence reduced
14 a little bit more; correct?

15 A Yeah, I'm not sentenced though.

16 Q I'm sorry?

17 A I'm not sentenced yet.

18 Q You're not sentenced yet. Right. Your sentence is being
19 withheld; correct? It's being put off until your work is
20 done; correct?

21 A Yes.

22 Q All right. So your hope is that by cooperating today
23 that your sentence will be reduced even a little bit more?

24 A Yes.

25 Q All right. And the gentleman to your right, His Honor --

1 to your left rather, His Honor is the one who's going to
2 sentence you; right?

3 A Yes.

4 Q And he saw you testify last time; right?

5 A Yes.

6 Q And he's watching you testify this time?

7 A Yes.

8 Q All right. And if there's another case, you'll testify
9 again, hoping to get your sentence reduced a little bit more;
10 won't you?

11 A Yes.

12 Q All right. So your purpose here is to help Mr. Gray and
13 for no other reason; correct?

14 A Yes.

15 Q Your purpose is not here to tell the truth or to see
16 justice, but rather to help Mr. Gray get out of jail before he
17 might have otherwise?

18 A I've got to tell the truth to help Mr. Gray.

19 Q Right. So the telling the truth is a requirement so that
20 you can help Mr. Gray?

21 A Yes.

22 Q All right. And so Mr. Gray's sentence to your case that
23 you pled guilty to, the conspiracy to racketeering, your
24 sentence is the most important thing in the world to you;
25 correct?

1 A Yeah.

2 Q All right. And -- all right.

3 THE COURT: I'll see counsel at the bench.

4 (Bench conference on the record.)

5 THE COURT: How much more have you got?

6 MR. O'TOOLE: An hour.

7 THE COURT: We'll stop here. You can resume your
8 positions. We're going to stop for the day.

9 (The following proceedings were had in open court.)

10 THE COURT: Ladies and gentlemen, we're going to
11 stop a little early today because I have another hearing that
12 I have to conduct that has nothing to do with this case.

13 The Marshal can take Mr. Gray out. We'll stop now
14 and resume tomorrow morning at 9:30.

15 So during this overnight recess do not discuss the
16 case with anyone. Do not discuss it with your fellow jurors.
17 Do not discuss it with any of your friends or family.

18 Remember, you're allowed to tell people who ask you that
19 you're serving on a jury in federal court in a criminal case,
20 the trial's expected to last until about the third week of
21 January, that you've been instructed by the judge that you're
22 not allowed to talk with anyone about the case. And if this
23 is true, you'll be happy to speak with them after the trial is
24 over, just not while it's underway.

25 Do not allow yourselves to be exposed to any news

1 articles or reports that touch upon the case or the issues it
2 presents or the participants in the trial. Avoid all contact
3 of any kind with any of the participants in the trial. Do not
4 make any independent investigation of the law or the facts in
5 the case. Do not conduct internet searches with respect to
6 the issues presented or the persons participating in the
7 trial. Do not consult external sources such as encyclopedias
8 or dictionaries in reference to the issues and terms that have
9 been presented to you here.

10 I would ask that you do try to get here at 9:15,
11 9:20. Leave yourself a little bit of a cushion in case
12 there's a traffic problem or something along those lines.
13 Hopefully we'll be able to begin promptly at 9:30 tomorrow
14 morning.

15 The jury is excused until then. Please take the
16 jury out.

17 (Jury left the courtroom.)

18 THE COURT: What's the lineup for tomorrow after
19 Mr. Gray?

20 MR. MARTINEZ: I think it's the same lineup as we
21 had indicated last Tuesday. We had mentioned Brian Rainey and
22 Task Force Officer Hayden.

23 I think now is probably a good time to mention we're
24 going to have a bunch of witnesses in this trial, Your Honor,
25 who have expressly asked us to avoid, to the greatest extent

1 possible, letting people know when they're going to be
2 testifying because they're afraid they're going to follow them
3 into the courthouse or out of the courthouse and that they'll
4 be waiting. So there are going to be more than a few
5 witnesses, who because of discussions we've had with them
6 during prep, we feel inclined to sort of honor their --
7 promises we made them about, you know, withholding the timing
8 of their testimony with as much latitude as we have under the
9 law.

10 THE COURT: Well, we'll handle that on a day-to-day
11 basis. In general, I will always ask you at the end of one
12 trial day who's going to testify the next day. I think
13 defense counsel are entitled to that opportunity to plan,
14 especially in a trial of this length where there are so many
15 witnesses and so much evidence. But that being said, I'll
16 hear you if you think in a specific instance that presents a
17 special problem.

18 Perhaps we'll have to work out special arrangements
19 in relation to that witness, but we're not going to compromise
20 a defendant's fundamental right to confront his accusers, and
21 included in that is some reasonable opportunity to anticipate
22 who's going to be testifying next just so counsel can be
23 reasonably ready. Otherwise, you know, you're sitting here as
24 a lawyer on the defense side and you've got to be ready at a
25 moment's notice to cross-examine any one of 100 different

1 witnesses. So that's not fair either, so we'll have to work
2 out something. As for tomorrow, it sounds like we have a
3 reasonable expectation as to who the witnesses are going to
4 be.

5 MR. O'TOOLE: I think we only have two -- we only
6 have two witnesses for tomorrow so far.

7 MR. MARTINEZ: Well, between those two and two and a
8 half more cross-examinations for Mr. Gray, I think that may
9 fill a day.

10 THE COURT: Okay. Well, let's just make sure that
11 the day is filled so that we don't waste any jury time. I
12 don't know how long these witnesses are going to be on the
13 stand, so I defer to you on that. So use your best judgment,
14 but don't leave us with unused time. Doing a little mental
15 math up here during one of your opening statements, and I
16 won't say who, but my mind wandered for just one moment as I
17 was counting heads in the courtroom. And my calculation is
18 that this trial probably cost the taxpayers about \$30,000 a
19 day, about \$3,000 an hour, and that's an expenditure that the
20 community is happy to make in order to honor the promise of
21 due process, but it's also the kind of money we shouldn't
22 waste.

23 All right. Anything else before we adjourn for the
24 evening, Mr. Martinez?

25 MR. MARTINEZ: Not from us, Your Honor.

1 THE COURT: Defense counsel?

2 MR. ENZINNA: No, Your Honor.

3 THE COURT: The defendants are remanded, counsel are
4 excused, and we'll start on the next matter, Counsel, just as
5 soon as we have the courtroom cleared.

6 I'll be back in a moment or two.

7 (The proceedings were concluded.)

8 I, Christine Asif, RPR, FCRR, do hereby certify that
9 the foregoing is a correct transcript from the stenographic
10 record of proceedings in the above-entitled matter.

11 /s/

12 Christine T. Asif
13 Official Court Reporter
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